

**ICOMOS - ICLAFI**  
International Scientific Committee on  
Legal, Administrative and Financial Issues

**THE EFFICACY OF PUBLIC AND PRIVATE  
PARTNERSHIPS (PPP) IN HERITAGE  
CONSERVATION**

**Symposium Proceedings E-book**

**ICLAFI SYMPOSIUM AND ANNUAL MEETING**

**16-18 October 2022**  
**İzmir, Turkey**



**ICOMOS  
TÜRKİYE**



Tarihi Kemeraltı'nın yeniden keşfi



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ICOMOS – ICLAFI International Scientific Committee on Legal, Administrative and Financial Issues  
International Symposium  
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## **PUBLIC AND PRIVATE PARTNERSHIPS (PPP) IN HERITAGE CONSERVATION**

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### **Abstract**

Heritage management, as many other public-interest services, are mainly of state responsibility in many countries, including the legal tasks on research, documentation, register, planning, conservation, funding, training, awareness raising and so on. As in the light of changing paradigm as of late 1970s, doctrinal documents, technical guidelines, and legal papers on heritage conservation are increasingly becoming more vocal to sharing those responsibilities of state with wider non-state partners, and advocating more participatory processes in heritage conservation, planning, and management practices. The notion that frames such partnership is called “governance”, which has been subject to both support and criticism in its practice for many years.

This paper aims to frame the theoretical basis of the issue that would speculate the discussion further in the panel sessions. To that end, the author will define the political, economic and technical strands behind the paradigm change endorsing collaboration in heritage conservation with non-state partners, and discuss the likely pros and cons of such collaborations from both practical and theoretical perspectives.

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### **Introduction**

For many years, state-led infrastructure and superstructure projects have utilized public-private partnerships (PPP) as a method to foster state-private financial cooperation. There have been interpretations with modest variations over time, despite the lack of a unified and definitive account.

One of the earliest definitions was published by the European Commission in 2003. It is defined as “a cooperation between the public and private sectors for the development and operation of infrastructure for a wide range of economic activities” without giving any reference to legal

contracts. The next definition by European Digital Libraries Initiative in 2008 is referring to “partnerships between a private-sector corporation and a public-sector body, through which the parties contribute different assets to a project and achieve complementary objectives”, but in 2010 we see a very specific reference to contractual agreements as well as to the share of risks, rewards and responsibilities, within the definition by National Council of America for PPP: “PPP is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility” (Riches Resources, 2016).

The World Bank defines PPP as “a long-term contractual arrangement between one or more contracting authorities and a private partner for providing a public asset or service, in which the private partner bears significant risk and management responsibility and remuneration may be linked to performance” (World Bank, 2022:5). By this definition, the responsibilities are loaded mainly on the shoulders of private sector. However, the Getty Conservation Institute’s definition which is making the link with the conservation activities, the role of private sector is defined as assisting the state in delivery of public services; “PPPs are contractual arrangements in which the private sector assists in delivering a public facility or service by providing funding or operating leadership” (Macdonald & Cheong, 2014:2). The document defines non-governmental, social and community-based institutions, and community near the site as the third party to this partnership.

### **Contextualization of PPP within Governance Approach**

Notwithstanding the fact that PPP is a neoliberal project as seen from today, there is a need to frame its grounds theoretically. We can go back to 1970s and 80s when neoliberalism, together with postmodernism and environmentalism has affected many domains profoundly which led to the emergence of a very popular concept, that is governance. Governance has been subject to both support and criticism in time, but we are observing an increase in efforts to strengthen its practice and allusions to it in heritage publications.

On the one hand, both liberal and bureaucratic concerns about fighting against corruption in the state apparatus and also saving public resources from waste has brought demands for transparency, accountability in the face of the public, as well as more efficient and effective use of public resources (Dunleavy and Hood, 1994). The outputs of such argumentations have been the development of new public managerialism which gave way to the establishment of state corporations, performance indicator mechanisms, participatory budget, etc.

In parallel, neoliberalism as fostered by globalization demanded its own medium which is defined by flexibility, adaptation to fast-changing circumstances, rapid decision-making, strengthening competitive advantages against rivals in the market. The state restructured itself based on the scale-selective policies (Brenner, 2003), enacted regulations for reducing bureaucracy, developing business-friendly environment in decision-making (Purcell, 2009), predominance of

different modes of democratic participation for flexible capital accumulation (Daly, 2016) and encouraging partnerships and networks to get best use of capacities (Harding, 2005) (Gordon and Buck, 2005).

From the political perspective, thanks to the plurality, rights-based and social inclusion quests of postmodern world, the modern state faced with the legitimacy crisis and critiques about the party politics and representative democracy channels (Healey, 2007). We now see that civil society gains strength and is rebuilding itself in the face of the state (Jessop et al., 2008) (Jessop, 2002). In parallel to the neoliberal space-making policies, concerns about the destruction of environment deliberately (Harvey, 2008) (Douglas, 1992) or through disasters triggered by the climate crisis, population movements and migrations due to armed conflicts, or economic reasons, it is argued that space politics are required to promote sustainability, resilience, and the protection of community rights. The spatial planning and heritage conservation disciplines have responded to these demands with integrated planning, impact assessment methods, systematic monitoring, and landscape-based approaches, among others.

All these agenda of the last 30-40 years now necessitate more inclusive, participatory, collaborative, communicative, transparent, accountable, responsive and just management systems, that is governance (Table 1). Governance refers to a management process in which multiple actors take part and interactions subrogate hierarchies. The function of the state in this process is to prepare the conditions for the actors to communicate without suppressing each other.

**Table 1.** Contextualization of Governance

<b>DOMAIN</b>	<b>PROBLEM</b>	<b>DEMAND</b>	<b>OUTPUT</b>
<b>Economic</b>	Corruption Waste of public resources	Transparency Accountability Efficiency/Effectiveness	New Public Managerialism Performance analysis
	Neoliberalism Globalization	Flexibility Rapid decision making Competitive advantage	State rescaling Reduced bureaucracy Localization Networking/Partnerships
<b>Political</b>	Legitimacy crisis Political representation crisis	Plurality Right to the city Social inclusion	Rebuilding civil society Urban social movements
<b>Spatial</b>	Environmental destruction Population movements Disasters	Sustainability Spatial justice Resilience	Integrated planning Impact assessment Monitoring

*Source: own elaboration*

For heritage management practices, we can identify several governance mechanisms from which we currently benefit; including but not limited to city assemblies, community portals, civil and scientific advocacy, management plans, impact assessments, and PPP. PPP is an alternative in which the private sector plays a larger role as a non-state partner.

Behind the development of the PPP model are basically three concerns; economic, political and technical (Table 2).

**Table 2.** Basic Motives for Applying PPP in Heritage Conservation

Economic Concerns	Political Concerns	Technical Concerns
<ul style="list-style-type: none"> <li>• to manage the increasing costs and responsibilities of services traditionally delivered by the public sector</li> <li>• to fill the gap between the public service needs and the ability of governments to meet them</li> <li>• to leverage funds for heritage</li> <li>• to use resources effectively and efficiently, and to mobilize technical, financial and human capacities</li> <li>• to increase competitive power of firms in the market (subsidies, incentives, tax reductions, exemptions etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• to share heritage management risks and responsibilities</li> <li>• to establish a form of dialogue and cooperation at local level</li> <li>• to develop a rights-based approach to conservation</li> <li>• to attain prestige and reputation for private firms</li> <li>• to catalyze wider social, cultural and economic development</li> <li>• to adopt to rapidly changing circumstances and to apply flexible and lively projects</li> </ul>	<ul style="list-style-type: none"> <li>• to accelerate the pace of conservation activities</li> <li>• to benefit from high capacities and skills as well as private sector flexibilities</li> <li>• to boost the exchange of good practices and abilities</li> <li>• to ensure continuity and good planning in conservation activities, to avoid from fragmented projects</li> <li>• to get expertise and investment opportunity in another sector</li> </ul>

Source: own elaboration benefiting from Macdonald & Cheong, 2014; Boniotti, 2023

As seen from the motives, this is ultimately a partnership model in which parties contribute to delivery of public services in a win-win situation.

### PPP in Heritage Doctrinal Papers

Parallel to their establishing role in theory and practice, heritage doctrinal papers have increasingly referenced governance strategy and the role of the private sector in heritage conservation and management in recent years.

Framework Convention on Value of Cultural Heritage for Society – so called Faro Convention – notes the need for “greater synergy of competencies among all the public, institutional and **private actors** concerned”, and “to develop the legal, financial and professional frameworks which make possible joint action by public authorities, experts, owners, **investors, businesses**, non-governmental organisations and civil society” (Council of Europe, 2005).

UN Habitat Istanbul Declaration on Human Settlements includes specific statements which read as follows: “we shall seek the active participation of our public, **private** and non-governmental partners at all levels”, “we shall also increase our cooperation with parliamentarians, the **private sector**, labour unions and non-governmental and other civil society organizations with due respect for their autonomy”, “we shall also encourage socially and environmentally responsible corporate **investment by the private sector**”, and “we must mobilize financial resources at the national and international levels, including new and additional resources from all sources - multilateral and bilateral, public and **private**” (United Nations, 2006).

UNESCO Recommendation on the Historic Urban Landscape Approach stated the need “to better integrate and frame urban heritage conservation strategies within the larger goals of overall sustainable development, in order to support **public and private actions** aimed at preserving and enhancing the quality of human environment”, and the need for “the policy, governance, and management concerns involving a variety of stakeholders, including local, national, regional, international, **public and private actors** in the urban development process”. The paper recommends that “**public and private stakeholders should cooperate, inter alia, through partnerships** to ensure the successful application of the historic urban landscape approach”, and “financial tools should be effectively employed to **foster private investment at the local level**” (UNESCO, 2011).

ICOMOS Paris Declaration on Heritage as a Driver for Sustainable Development notes that “Heritage protection in the context of development also involves the creation and **continuous revision of institutional and legal frameworks** at a local, national and international level... The frameworks would involve **consultation following the procedures of democratic governance and participatory planning**, resulting in a good level of understanding and acceptance which will assist in their effective implementation” (ICOMOS, 2011).

The Operational Guidelines for the Implementation of the World Heritage Convention, as being the main regulation guiding the conservation and management frameworks and practices for nominated and inscribed World Heritage properties, also includes numerous statements addressing the issues of governance and PPP. These are (UNESCO, 2021):

- Article 39 & 40 – Partners in the Protection of the World Heritage: “**A partnership approach**, underpinned by inclusive, transparent and accountable decision-making, to nomination, management and monitoring provides a significant contribution to the protection of World Heritage properties and the implementation of the Convention. Partners in the protection and conservation of World Heritage can be those individuals and other stakeholders, especially **local communities, indigenous peoples, governmental, non-governmental and private organizations and owners** who have an interest and involvement in the conservation and management of a World Heritage property.”
- Article 111 – Common Elements of an Effective Management System: “e) the development of mechanisms for the involvement and coordination of the various activities between **different partners and stakeholders**”
- Article 117 – Collaboration for Effective Management Activities: “States Parties are responsible for implementing effective management activities for a World Heritage property. States Parties should do so in close collaboration with **property managers, the agency with management authority and other partners, local communities and indigenous peoples, rights-holders and stakeholders in property management**, by developing, when appropriate, equitable governance arrangements, collaborative management systems and redress mechanisms.”
- Article 214bis – Capacity Building Strategies: “State Parties are encouraged... to promote sustainable and inclusive economic benefits for local communities and indigenous peoples and **to identify and promote opportunities for public and private investment in sustainable development projects.**”

- Article 230 & 231 – Mobilization of Technical and Financial Resources and Partnerships: “States Parties are encouraged to promote the **establishment of national, public and private foundations or associations aimed at raising funds to support World Heritage conservation efforts**. The Secretariat... actively engages in **resource mobilization, including through developing partnerships with public and private institutions.**”

All these statements and provisions together show that governance defined by strengthened partnerships between state and non-state actors is key to good management of heritage places. PPP as a governance tool however holds certain drawbacks, limitations, challenges, and gaps that should be filled with our knowledge gained through our experiences from the ground.

### **Challenges Implementing PPP on the Ground**

The difficulties in implementing PPP can be broken down into the same three dimensions – economic, political, and technical – that underpin its justifications.

From the economic perspective;

- It is observed that the private sector still pays little attention to historic conservation. Heritage protection may be regarded as a low-return investment opportunity, but the financial motive should not drive partnership formation.
- Involvement of a for-profit company into heritage conservation raises concerns about commodification of heritage places and values, or damaging the physical or non-physical authenticity of heritage places for the sake of profit. There is a great need of financial and technical accountability.
- Partnerships are developed to attain the end-product or service, but the costs associated with operation, subsequent employments, monitoring should be included into the scopes of the contracts so that a cyclical monetary system can continue to support the system's function.
- Last but not least to this section, any intervention made to the space will generate some rents the amount of which is proportional to the impact on the surrounding region. The rent development should not be disregard or undermined, but the question is how to make it public-serving. PPPs are liable for managing this transition.

From the political perspective;

- Parallel to the concern mentioned above, the political legitimacy of the private sector's position in this collaboration is occasionally contested within the community, resulting in the politicization of technical studies. Constant engagement and interactions with the community are necessary.
- The community is always at the very heart of any conservation practice. Partnerships should guarantee that heritage places are protected alongside their communities, that their attachment to and relationship with the site is honoured, and that living conditions at the heritage places do not deteriorate as a result of the rent generated.

- In an effort to maximize the use of available resources, placing a disproportionate amount of responsibility on one partner may result in partnership imbalance. Instead, the risks and obligations should be distributed in accordance with the capabilities of each party. Otherwise, the process would not be successfully and efficiently controlled.
- PPP is generally viewed as an agreement between the public and private sectors; however, the community is a natural partner to this arrangement. In its absence, local knowledge, interests, and expectations will not be appropriately studied or evaluated when conservation projects are implemented. This may lead the process to fail in the long run.
- Legal regulations limit the partners' authority or influence. If an agreement involves ill-defined roles in relation to existing laws, this would lead to authority encroachment by any partner, and this would very likely be the private sector.
- Last but not least to this section, heritage conservation is a value-based practice. Heritage places may hold different values; some are intrinsic to the heritage characteristics while some others are attained by the society based on their use. The partnerships may find themselves in an environment in which they have to manage conflicting values. This is one of the challenges that determines failure of a partnership, along with others, unless the partners are well-prepared and have relevant experience.

From the technical perspective;

- Both the public and private sectors have their own talents and areas of expertise, but their abilities to manage processes may not always be in parallel pace or flexibility. This may lead to delays, loops, or gaps in the time management.
- Because one of the expectations from PPP is to accelerate the conservation practices on the ground, the neoliberalism's speed concern may lead to limited external technical negotiations with partners outside the partnership. Under such conditions, technical monitoring and accountability are likely to fail.
- In cases where the partnerships are formed for constructions, the focus may be on the building plot, or to a certain extent on its immediate vicinity. However, considering larger spatial scales would facilitate the distribution of social and economic benefits to a larger area, thereby contributing to the partnership's goals.
- Heritage conservation is a process that necessitates specialized training and credentials. The state's risks will increase if it enters a partnership with a private entity that possesses financial resources but lacks heritage-related expertise. Partnerships should not introduce new risks while attempting to share existing ones.
- Last but not least, it is our shared responsibility to assess the impact of the projects on the society and environment both priorly and as a follow-up to the project, and these responsibilities should be incorporated into the scopes of the contract.

## **Discussion**

The current agenda or changing worldwide economic and political circumstances as of 1970s has affected the heritage practices profoundly which necessitated adoption of new policy documents in due course. Based on the underlying ideological and political principles, today's heritage

conservation paradigm requires establishing effective, responsive, participatory and transparent management structures; sharing state’s responsibility for policy making, implementation, and monitoring with non-state partners; effective and efficient use of resources, and mobilization of technical, financial and human capacities; exceeding the legal vertical (central, regional, local) and horizontal (state, private sector, civil society) hierarchies, and creation of networks; sustainable and proper use of heritage places through integrated and holistic policies by taking all social, economic, administrative and spatial dimensions into account; ensuring community’s right to participate in decision making as well as monitoring; and an interdisciplinary approach for intense exchanges and negotiations among diverse disciplines.

Despite the rising focus and allusions to the PPP within the heritage field, there is still little room and few cases to discuss its effectiveness and long-term effects on heritage places. The aforementioned barriers are fundamental to the efficacy, and quality results can only be accomplished if the drawbacks are eradicated and a balanced focus is placed on all economic, political, and technical aspects.

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## TARKEM AS A MODEL FOR PUBLIC AND PRIVATE PARTNERSHIP IN HERITAGE CONSERVATION

Sergenç İNELER & Ahu SÖNMEZ  
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Ahu Sönmez has obtained her Bachelor's Degree in Architecture from Yaşar University. Currently, she is pursuing her Master's Degree in the Restoration Department at Dokuz Eylül University. She is working as an architect at TARKEM since 2018, a public private partnership company. She has experience in the field of restoration, preservation of cultural heritage and project/construction management. She continues her studies and professional career in the fields of preservation of cultural heritage and heritage management, especially archaeological heritage.

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### Abstract

TARKEM was established with the aim to protect the urban heritage values of Izmir and to revitalise the historical city centre. It has created a new business model introducing public-private sector partnership. One of the first and most notable instances of the public-private joint sectors in Türkiye, TARKEM is composed of around 40% public, 10% chambers and stock markets and 50% private sectors. TARKEM aims to develop innovative real estate, service and logistical projects about cultural heritage within the Kemeraltı Bazaar and the Surrounding Urban Regeneration Area chartered in 2007.

TARKEM carries out investments and activities within the vision: 'Uplifting the cultural and historical values of our city, through public and private partnership and a participatory management approach.'

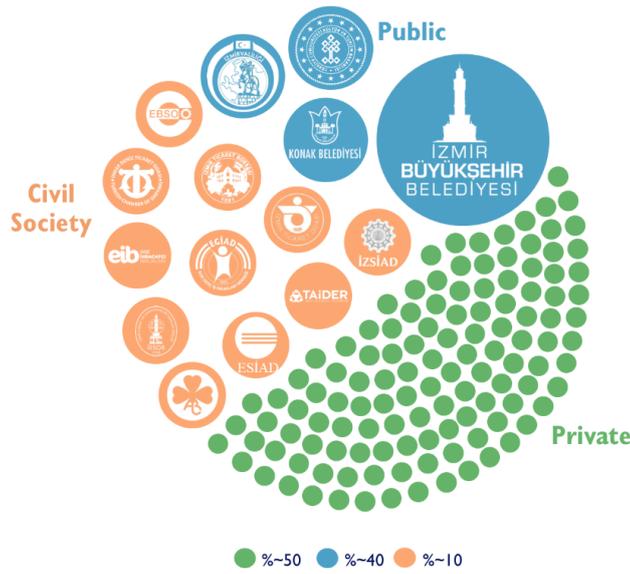
The presentation in question is about the 'dissemination of the public-private partnership model in the protection of cultural heritage in Turkey and the rest of the world'.

---

### Introduction

TARKEM (Historic Kemeraltı Development, Investment, Commerce Inc.), was established in 19 November 2012 with the aim to protect the urban heritage values of Izmir and revitalise the historical city centre. It has created a new business model introducing public-private sector partnership with multiple shareholders.

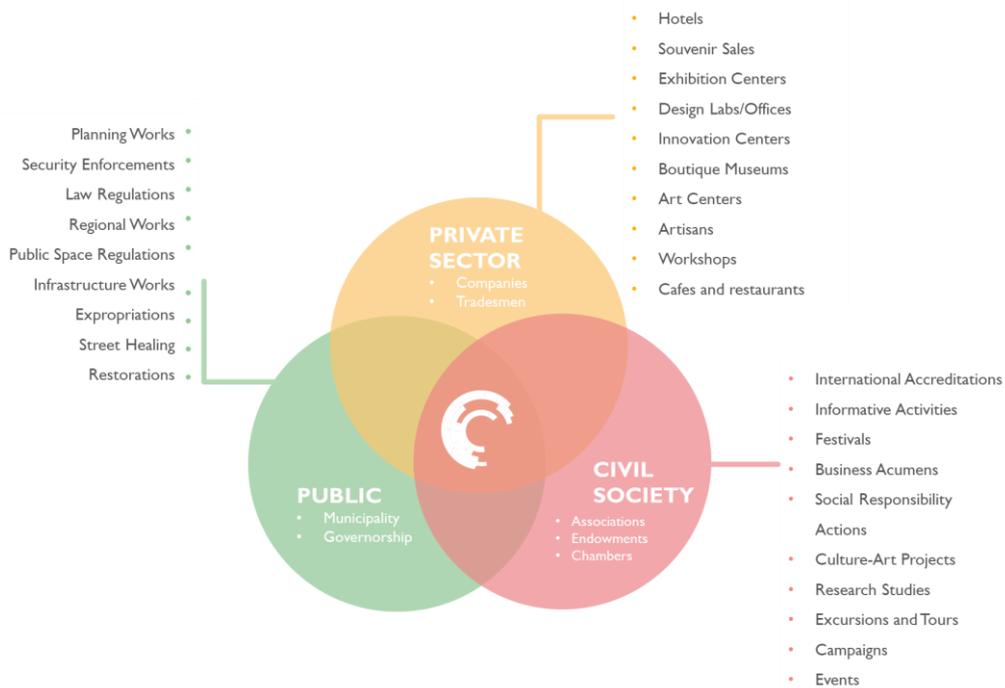
One of the first and most notable instances of the public-private joint sectors in Turkey, TARKEM is composed of around 40% public, 10% chambers and stock markets and 50% private sectors (Figure 1). TARKEM's private partners include a range of shareholders from local artisans to entrepreneurs devoted to protecting Izmir's heritage.



**Figure 1.** The share of sectors within TARKEM administration © TARKEM archive

When we analyse the transformation of the historical city centres around the world, we can see that common features of the successful areas are that they brought three important groups together and prepared a strategic plan on which all segments of society agreed.

TARKEM aims to develop innovative real estate, service and logistical projects in the Kemeraltı Bazaar and the surrounding urban regeneration area, engaging local communities and prioritising the collapsing areas at risk.



**Figure 2.** Responsibilities and duties of shareholders in conservation management © TARKEM archive

The historical Kemeraltı Bazaar and its surroundings are still known as the city centre and are active today. Encompassing around 2,000 registered monumental and civil architectures, 2500-year-old urban fabric, Kemeraltı creates and develops a cultural mosaic with its rich cultural artefacts such as inns, artisanal workshops, hotels, baths, mosques, churches, synagogues, schools and fountains.

A cultural journey, starts in 7th century BC in Yeşilova, continues through the Archaic age in Smyrna of Bayraklı and finally arrives to the New Agora. The city was built on the axis between Kadifekale and Kemeraltı areas after Alexander the Great’s Eastern campaign. It has expanded and developed around this central core for 2300 years. The region resembles an open air museum with the presence of the Hellenistic and Roman Kadifekale, Ancient Agora of Smyrna, an amphitheatre, an ancient stadium, the Kemeraltı Bazaar that flourished under the Ottoman rule and many neighbourhoods that are adorned with public and civil architectural gems.

TARKEM has composed the following vision statement: Bridging the past and the future of the area, pioneering, inciting and facilitating the development toward making Izmir a renowned, reputable and popular cultural heritage destination.

Our relief projects provide assistance to the demands of the locals as well as visitors in the Izmir historical city centre area. Projects involving logistics, data processing, and introducing an internet infrastructure system are materialised in collaboration with interested parties.

Similar to its international counterparts, developing the area to be the “old town” that attracts a younger population, encouraging locals’ engagement with the history is the main goal of the Socio-cultural projects. With this motive, events are organised in partnership with many institutions and non-profit organisations. Additionally, there are efforts in favour of the identification and promotion of the heritage values of Izmir Historic City Centre.

In TARKEM with the aim to revitalise the Izmir Historic City Centre, we invest in the area using a “hot spot” strategy. We identify the buildings that have a strong influence on its surroundings and conduct restoration as well as purchasing, assembling partner companies and long-term rentals within the strategic frame. Historic buildings are repurposed after careful consideration of their previous functions throughout their lifetime.

### **TARKEM Real Estate Projects**

TARKEM currently carries out 18 real estate projects in order to protect the urban values in Kemeraltı and its Surrounding Urban Renewal Area and to bring them back to the society. The project focused its work on 3 regions, namely Basmane Region, Kestelli Region and Havralar/Synagogues Region, which were selected from 19 sub-regions determined in Izmir Historical City Centre (Figure 3).

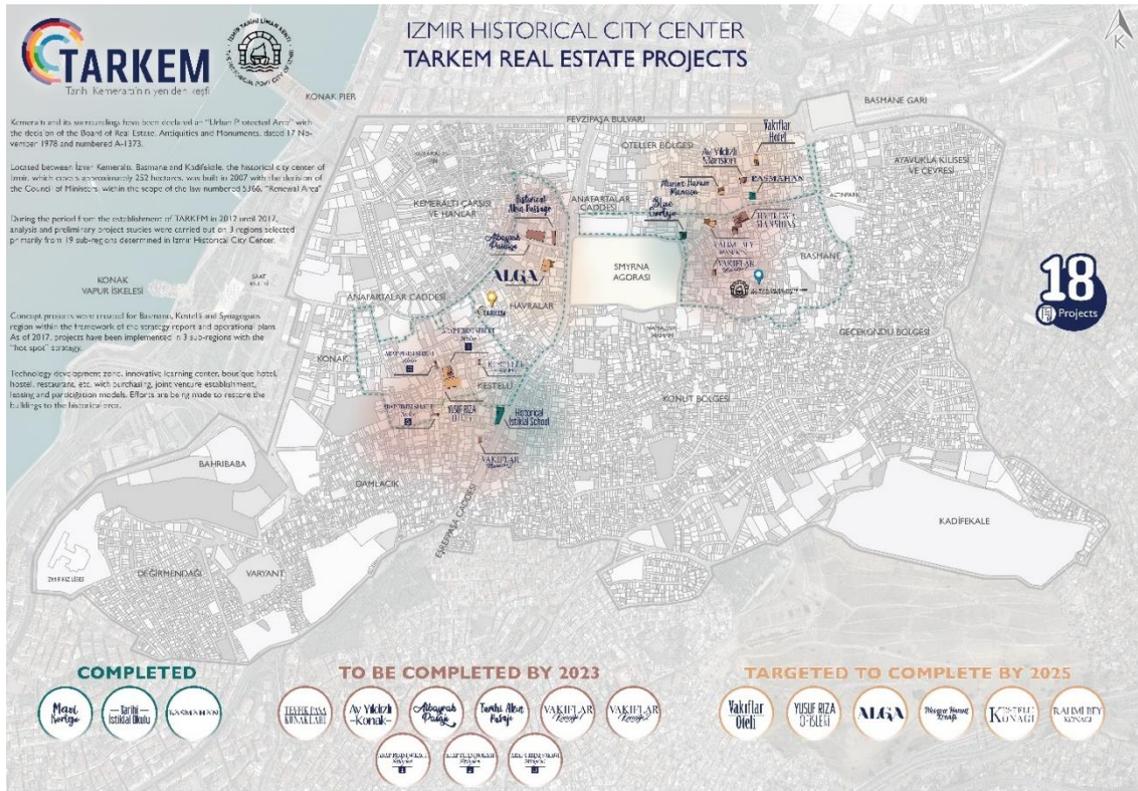


Figure 3. TARKEM Real Estate Projects © TARKEM archive

Since 2017, TARKEM has started to work on building and land based projects and implementations in three sub-regions with the "hot spot" strategy. Architectural project studies are initiated by the architectural team within TARKEM with concept projects prepared under the supervision of TARKEM Architectural and Technical Advisory Board. Meetings are held with the representatives of academicians, business managers, non-governmental organizations and public institutions who are experts in the project, in order to reach the most accurate design decisions. After the concept project phase, application project studies are carried out with competent architectural offices. Restoration/construction applications are started after the buildings approved by official institutions. Architectural project and technical implementation processes are coordinated by the architectural team within TARKEM.

TARKEM realizes its investments through three different models: purchasing, joint company establishment and long-term leasing model.

Investments made with the purchasing model are purchased by TARKEM with its equity capital, according to the current value and the purchase value resulting from the valuation report.

In buildings invested with a joint company model, company shares are formed according to the rate of covering the costs incurred by evaluating the valuation report of the building, restoration/construction implementation costs and operating expenses according to the operating scenario, and the invested structure is purchased by the newly established company between

TARKEM and the owners of the building. Thanks to this investment model established between TARKEM and the property owners of the building, the building is brought back to urban life.

With the long-term rental model, the duration of the contract is determined as a result of negotiations with the property owner, according to the restoration cost of the building and the operation scenario, the property owner is informed at each project stage and the project approval is obtained from the property owner. After the restoration application of the building is completed, the building is put into operation with the determined function, and after the contract period expires, the building is transferred back to the owner. Thus, at the end of the contract, historical buildings that have become derelict due to various reasons such as restoration costs and failure to obtain project approvals are delivered to the property owner as restored and brought back to the city life with the business inside.

With these models, TARKEM tries to develop tourism and protect cultural heritage with the concept of the old city, taking into account the balance of protection-utilization of the historical site. All projects carried out by TARKEM are determined in line with the historical functions of the buildings and in a need-oriented manner in order to contribute to sustainable development. A structure has been designed in which other historical buildings will be restored with the operating income of the restored buildings.

Kemeraltı and its surroundings have been declared an “Urban Protected Area” with the decision of the Board of Real Estate, Antiquities and Monuments, dated 17 November 1978 and numbered A-1373. Located between İzmir Kemeraltı, Basmane and Kadifekale, the historical city centre of İzmir, which covers approximately 252 hectares, was built in 2007 with the decision of the Council of Ministers, within the scope of the law numbered 5366, “Renewal Area”.<sup>1</sup>

“İzmir History Project” was initiated by the Izmir Metropolitan Municipality in 2013 in order to enrich the historical memory of Izmir, to preserve the historical texture from the Antiquity to the present day, to reverse the formation of the collapsed areas and to redesign the Kemeraltı Renewal Area in a way that ensures the integrity of protection and development.<sup>2</sup>

TARKEM, which is an important actor of the project in order to ensure the cooperation of public, private and non-governmental organizations within the scope of the Izmir History Project initiated by the Izmir Metropolitan Municipality,<sup>3</sup> to carry out the applications designed to be carried out within the project area with a holistic approach; organized study meetings with public, private, non-governmental organizations and universities, and applied participatory planning techniques.

A comparative analysis of the situation, change and dynamics in the spatial, demographic, economic and commercial identity of the region with Turkey's metropolises has been carried out.

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<sup>1</sup> <https://www.resmigazete.gov.tr/eskiler/2007/10/20071031-5.htm> (13/12/2022)

<sup>2</sup> İZMİR HISTORY Project Design Strategy Report

<sup>3</sup> İZMİR HISTORY Project Design Strategy Report

Workshops on Urban Archaeology, Youth Activities, Housing and Legal Regulations, Financing Models were held. In order to get to know the Mediterranean, which has a special importance in terms of World History, and to understand its possibilities, a conference on the history of the Mediterranean was held. As a result of the studies and evaluations carried out, the “İzmir History Project Design Strategy Report” and “Operation Plans” were completed with the cooperation of all relevant city stakeholders, especially the users of the region.

TARKEM has carried out analysis and preliminary project studies with DEU and IZTECH in 3 regions selected primarily from 19 sub-regions determined in Izmir Historical City Centre in the period from 2012 to 2017. Strategic plans for the Havralar (Synagogues), Kestelli and Basmane regions were prepared and preliminary architectural projects were prepared.

Izmir Historical City Center consists of 19 sub-regions. Hatuniye District covers the section from the beginning of Eşrefpaşa Street to Basmane Train Station on Anafartalar Street. While the area lies between the Ancient Smyrna Excavation Site and Fevzipaşa Street, it includes the Hatuniye Square and the Hotels District in its centre, as well as the old Turkish neighbourhoods. It is a historical area within the Historic City Centre that is planned to be a centre of attraction for local and foreign tourists and all citizens, especially young people with backpacks. It is planned that a wide variety of cultural and artistic areas will be created by improving and expanding the accommodation function in the region. It is planned to establish boutique and small hotels, youth hostels, community centres and cultural and art institutions. The region is becoming a new focal point for investments in these functions.

Kestelli Region; between 2. Beyler (848 Street) and 919 Street, including all the left and right buildings of Kestelli Street; It is the area bordered by Eşrefpaşa Street in the south and Anafartalar Street in the north. It is the area within the Historic City Centre, which is planned to create a centre of attraction for young people, artists, new generation companies and their employees. The Kestelli District will be shaped to create offices, learning centres, art inns and galleries, and social and cultural centres in addition to innovative functions. The region is becoming a new focal point for investments in these functions.

The Havralar/Synagogues Area covers the section starting from 919 Street between Anafartalar Street and Eşrefpaşa Street. The region includes Havra Street, inns, baths and registered structures, including nine synagogues back to back, with a history of 500 years. It is described as the area with the highest commercial and touristic potential in the Historic City Centre. The Havralar/Synagogues Region, which is planned for the establishment of handicrafts, design, performance, art and gastronomy centres, the Izmir Jewish Museum, passage/arcade restaurants and commercial inns, becomes a centre of attraction for investments related to the transformation of these functions.

### **Real Estate Content Development Projects**

Our European Union Horizon Program application, which we applied with 28 partners from 8 countries, was accepted. The project named “Eyes, Hearts, Hands” will last 36 months and has an approximate budget of 5 Million Euros. “Kemeraltı and its Surroundings” will be included in the project and our UNESCO World Heritage process will be positively affected by this project. Within the scope of the “Eyes, Hearts, Hands, Urban Revolution” project, it is aimed to handle socio-economic and cultural difficulties such as social segregation, energy deprivation and population decline in historical city centres by spreading to seven different places in the EU and related countries.

In order to increase the interest of young people in Kemeraltı Bazaar, the historical centre of İzmir, and to enable craftsmen to transfer their knowledge and experience to future generations, 4 institutions in the city collaborate for the project call of the "Future Youth" of the Ministry of Culture and Tourism General Directorate of Copyrights. Izmir University of Economics Creative Economy Application and Research Centre (İUE+KREA), TARKEM A.Ş., Historical Kemeraltı Tradesmen Association and İzmir Bilimpark A.Ş. have launched the 'İMECE: Art and Craft-Focused Creative Entrepreneurship Centre' project that will add dynamism to Kemeraltı. While the project was being prepared, the ministry provided funding for the project.

### **Preparation of the Management Plan and the World Heritage List Candidacy File for the Historic Port City of Izmir**

TARKEM is the authorized institution to prepare the UNESCO World Heritage List nomination file of The Historic Port City of Izmir. Izmir Historical City Centre, is the site encompassing the Historic Kemeraltı Bazaar, Basmane railway station, Mount Kadifekale and the surrounding areas. It has been the habitat of civilisation for around 2500 connecting it to the rest of the world. It still preserves its historic town centre status with its inns, bazaars, mosques, synagogues, churches and the ancient port. Izmir Historical City Centre, is the heart of the 8500 years old Historical Port City of Izmir with the Yeşilova and Yassitepe mounds in Bornova as well as the Old Smyrna of Bayraklı. The Historical City Centre has been the centre of both land and sea trade in Izmir throughout its 2500-year history.

### **Socio-cultural Events and Promotions in Historical City Centre**

TARKEM opened its office to the TV series team in order to increase the interest of the cinema industry in the region and to make Kemeraltı more visible for the TV series.

Setting off with the concept of "7 Cities, 7 Regions, 7 Countries", of which Izmir Metropolitan Municipality is one of the main sponsors, the Gastro Show hosted hundreds of participants, tens of sessions and thousands of visitors at the Istanbul Congress Centre. The TARKEM stand, which gives visitors the opportunity to try Kemeraltı Tastes, also took its place at the fair. Visitors to the fair learned about the gastronomic culture of Izmir and the Aegean region, especially Kemeraltı Tastes.

The “Gezi-Yorum on Kemeraltı, the Heart of İzmir” project, which has been given to its students as a project for many years by the İzmir American College History Department and has now become a tradition of the school, will be held at Kemeraltı Portugal Synagogue on 9-10 June with the support of TARKEM and EGİAD.

The "3x3 Videathon Kemeraltı Video Competition", organized in partnership with İzmir Cinema Office which was established in line with the vision of İzmir Metropolitan Mayor Tunç Soyer to host the cinema industry, and continues its activities with the aim of increasing the attractiveness of İzmir with film productions and visual content production and TARKEM which was established to create a new business model to protect and develop İzmir's urban values, and to revive İzmir Historical City Centre with this model, was held in Kemeraltı.

50 stands in "Kemeraltı Street", which was opened for the first time at the 88th İzmir International Fair; It reflected the tastes, masters and brands of Kemeraltı to the visitors for 10 days. Hundreds of thousands of visitors to Kemeraltı Street learned the history of brands such as Eczacıbaşı, Dalan and DYO, which emerged from Kemeraltı and became world giants. On the other hand, visitors had the opportunity to taste the unique delicacies of Kemeraltı such as cold cuts, şambali, cauldron, pancake, cheese, soup, halva, fish and mussels.

Project studies were carried out in the Historical City Centre with the students of the Architecture and Interior Architecture Departments of various universities in İzmir. İzmir Historical City Centre was introduced thanks to the participation of academics, architects, interior architects and designers, both domestic and abroad, who participated in the end-of-term project presentations.

Kemeraltı and its surroundings, which are included in the UNESCO World Heritage Tentative List as the "Historical Port City of İzmir", were featured in the 62nd issue of the magazine "Local Identity from the Past to the Future", the publication of the Union of Historical Cities.

SunExpress Airlines for the promotion of İzmir; After Ephesus and Bergama, a short promotional film was shot in Smyrna Agora with the support of TARKEM. In addition, a travel article on Smyrna Agora and Kemeraltı was published in the July 2019 issue of SunExpress Airlines' SunTimes Magazine.

TARKEM, which has no other example in Turkey, was deemed worthy of the award in the "Collaboration" category by the Sustainability Academy within the scope of the "Sustainable Business Awards 2019", with its structure consisting of public, private and non-governmental organizations that came together to leave the İzmir Historical City Centre as a legacy to future generations. The Historical İstiklal School Project, of which we are a participant, was also awarded in the "Collaboration" category within the scope of the "Sustainable Business Awards 2020" organized by the Sustainability Academy.

## PUBLIC-PRIVATE PARTNERSHIP AND PROTECTION OF RUSSIA'S HERITAGE

Nikolay LAVRENTYEV & Andrey GAREVSKY  
*ICOMOS Russia*

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Andrey Garevsky got a degree in Economics in 1999 and degree in Law in 2004. He is dealing with Russian and international legislation on protection of cultural heritage sites since 2010. He is the managing partner of the law company AAG Legal LLC in Russia.

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### Abstract

The PPP mechanism in projects related to the protection of heritage in Russia has been used relatively recently, since the right to private ownership of real estate in Russia was restored only in 1991. In general, PPP in Russia is understood as a legally fixed form of interaction between the state and a private partner in relation to state property in order to implement socially significant projects. Various types of contracts can act as PPPs: lease, gratuitous use or trust management, concession agreements. A peculiar feature of PPP in the field of heritage protection is the requirements of the legislation, according to which the investor assumes all the restrictions associated with the need to protect the monument.

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### Introduction

In Russia, the legislation regulating the heritage protection by the state has existed for many years. During the Soviet period up to 1991, when the legal foundations for heritage protection were laid, there was no private ownership of land and other real estate. At that time all heritage objects were state-owned and could only be used by organizations that were also the property of the state. Thus, until 1991, the restoration and maintenance of heritage sites, their adaptation for modern use were carried out exclusively at the expense of the state.<sup>4</sup>

The right of private property in Russia was restored in 1991 and at the same time the right of private ownership of heritage objects arose, which carries the encumbrances of the owner for the preservation of the heritage object. However, a huge number of Russian heritage sites are still owned by the state (federal or regional property) or municipalities. Unfortunately, budgetary funds, for various reasons, including corruption, are not enough to maintain a significant number of heritage sites owned by the state or municipalities.

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<sup>4</sup> Lavrentyev, Nikolay / Garevsky, Andrey: The System of Monuments Protection in Russia: Specific Features and Problems, in: Defining the role of local authorities in managing and propagating cultural heritage. International Symposium October 22-24, 2019. Symposium proceedings book. Gaziantep, 2020, pp. 151—158.

One of the possible legal mechanisms for involving non-state funds into the restoration of heritage sites is the public-private partnership (PPP). The Federal Law 'On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation'<sup>5</sup> was enacted only in 2016. However, the PPP mechanism in the field of heritage protection had been used in Russia before, starting from the early 2000s. For example, in St. Petersburg, there is the Law of St. Petersburg dated December 25, 2006, No. 627-100 'On the participation of St. Petersburg in public-private partnerships'.<sup>6</sup>

### **Public-private partnership in Russia**

Clause 1) of Article 3 of the Federal Law of July 13, 2015 No. 224-“On Public-Private Partnerships, Municipal-Private Partnerships in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation” determines that public-private partnerships and municipal-private partnerships is a legally formalized for a certain period of time and based on the pooling of resources, the distribution of risks, cooperation between a public partner (public authorities or local self-government), on the one hand, and a private partner, on the other hand, which is carried out on the basis of a public-private partnership agreement, an agreement on municipal-private partnership concluded in accordance with this Federal Law in order to attract private investments into the economy, to ensure the availability of goods, works, services and improve their quality by public authorities and local governments.

PPP objects are listed in Article 7 of the abovementioned Federal Law, however, heritage sites are not directly indicated as a separate type of PPP sites. Nevertheless, the listed objects, for example, objects of education, culture, sports, objects used for the organization of recreation of citizens and tourism, other objects of social services for the population (paragraph 12) - may be sites of heritage.

The specific type of PPP contract is not defined. Various types of contracts and agreements can act as PPPs: lease, gratuitous use or trust management, concession agreements, etc. According to Article 6 of the abovementioned Federal Law, a specific type of contract is determined at the discretion of the authority or local government. As a result of the implementation of the PPP, the ownership of the heritage site may remain with the state or pass to a new private owner, subject to all the terms of the contract or agreement.

### **Public-Private Partnership in Relation to Russian Heritage Sites**

Now in Russia there are about 148 thousand heritage sites (monuments of history and culture). Unfortunately, their number tends to reduce. Many heritage sites are not used and (or) are in an unsatisfactory condition, which every year leads them to even greater destruction and the impossibility of using them in the future<sup>7</sup>.

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<sup>5</sup> Russian Newspaper, issue 156, 17.07.2015.

<sup>6</sup> Sankt-Peterburgskie Vedomosti, issue 244, 28.12.2006.

<sup>7</sup> Nagornaya, M. S. / Shevtsova, V. V.: The practice of public-private partnerships in the sphere of preservation of cultural heritage of Russia, in: Management in modern systems, issue 1 (17), 2018, pp. 34—43.

For example, the following statistics can be cited: from 2012 to 2015, the number of heritage sites in disrepair increased. In 2012, only 4% of facilities were in disrepair and 18% were in unsatisfactory condition. According to 2015 data, these figures were 6% and 21%, respectively.<sup>8</sup>

There are several reasons for the large number of heritage sites in disrepair and unsatisfactory condition. After the collapse of the USSR and the transition to a market economy, a significant number of heritage sites that were in the use of organizations and, for example, were used as rest houses, hostels and other social facilities, turned out to be ownerless, since many organizations after 1991 were privatized and ceased to use the heritage sites, where previously their employees could rest free of charge, or these organizations were completely liquidated. Therefore, gradually, some heritage sites were simply abandoned, for example, this applies to many former suburban noble estates.

On the whole, the Russian budget turned out to be unable to properly maintain and preserve such a significant number of heritage sites that were previously used by organizations that became commercial or ceased to exist. Many budgetary institutions turned out to be unable to properly maintain heritage objects: scientific organizations, higher education organizations, medical institutions, schools, kindergartens, etc. Thus, the burden of maintaining heritage properties is enormous, and the possibilities of local, regional and federal budgets are limited.

In this regard, the state is interested in transferring part of the burden of maintaining heritage sites to private investors. And the PPP mechanism is well suited for the implementation of such projects, in which the heritage object goes into private ownership with a new owner assuming investment obligations for the restoration of the object and its subsequent maintenance in the proper form in compliance with the requirements for the preservation of heritage properties.<sup>9</sup>

As already mentioned, the practice of using PPP, including in the field of heritage protection, has been used since the early 2000s. That is, until the adoption of a separate federal law that established the concept of PPP and regulates their features.

The main feature of PPP in the field of heritage protection is the requirements of Part 4 of Article 48 of the Federal Law of June 25, 2002 No. 73-FL ‘On Cultural Heritage Objects (Monuments of History and Culture) of the Peoples of the Russian Federation’<sup>10</sup> (hereinafter referred to as the Federal Law on Heritage Protection), according to which the owner assumes restrictions (encumbrances) of ownership of the heritage object and obligations for the maintenance of the object, its preservation, requirements for the conditions for citizens to access it, and other requirements ensuring its safety.

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<sup>8</sup> Gudz, T. V. / Korotkov, D. B. / Samolovskikh N. V.: Problems of applying the institution of public-private (municipal-private) partnership in relation to cultural heritage objects, in: Perm Legal Journal, issue 3, 2020, pp. 318—326.

<sup>9</sup> Paliy, Kristina R: On the Question of Public-Private Partnership in the Field of Protecting Cultural Heritage of St. Petersburg, in: Management consulting, issue 5, 2019, pp. 140—150.

<sup>10</sup> Russian Newspaper, issue 116—117, 29.06.2002.

### **Benefits for the Lease of Heritage Sites Owned by the State or Municipalities**

One of the most common heritage PPPs is leases, as provided for in Article 14 of the Federal Heritage Protection Act. As a counter security on the part of the state or municipality, the lessee of the heritage object can claim a preferential rent, provided that he has carried out work to preserve the cultural heritage object at his own expense. Preferential rates are established by the state authorities of Russia, its subjects or municipalities.

Such an institution of preferential lease should contribute to the preservation of the heritage object by the tenant. But at present, such an opportunity is implemented in relation to objects of federal property, as well as only in some subjects of Russia and municipalities. For example, on the territory of the Moscow Region, there is a Decree of the Government of the Moscow Region dated May 13, 2013 No. 297/17 ‘On Approval of the Procedure for Establishing Preferential Rent and Its Amounts in Respect of Cultural Heritage owned by the Moscow Region’<sup>11</sup>. St. Petersburg adopted Law No. 107-21 dated March 13, 2013 “On the Procedure for Establishing Preferential Rent for Cultural Heritage Sites Owned by St. Petersburg...<sup>12</sup>; in the Perm Territory, this was implemented in the Decree of the Government of the Perm Territory of February 13, 2014 No. 74-p ‘On Approval of the Procedure for Establishing Preferential Rent and Determining Its Size in Relation to Cultural Heritage Sites (monuments of history and culture) of the peoples of the Russian Federation owned by the Perm Territory’<sup>13</sup>.

Part 2 of Article 14 of the Federal Heritage Law provides the opportunity to set off as rent the cost or part of the cost of preserving a heritage site. For example, the person who is a tenant of a federal heritage property may qualify for a reduced rental rate. The amount of the reduction is determined by the size of the relevant costs of the tenant. The procedure for providing and the amount of this compensation is fixed by the lease agreement. However, this rule does not allow the application of this mechanism to heritage objects that are in regional or municipal ownership, which is why a significant number of heritage objects cannot participate in this. This is a problem, since most of the heritage sites that are in disrepair or unsatisfactory condition are in regional or municipal ownership and cannot be maintained at the expense of regional or local budgets due to their scarcity. At the same time, in general, federal property heritage sites are initially in better condition than the property of Federal subjects or municipalities.

New Article 14.1 of the Federal Law on Heritage Protection, introduced in 2014, provides for the transfer of an unused heritage site in unsatisfactory condition on lease for 49 years with the establishment of a preferential rent with the obligatory work and measures to ensure the safety of the site. This article was introduced precisely in connection with the problem of a large number of decaying heritage sites. However, this rule also applies only to the heritage objects of federal property.

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<sup>11</sup> Daily News. Moscow region, issue 96, 31.05.2013.

<sup>12</sup> Bulletin of the Legislative Assembly of St. Petersburg, issue 10, 25.03.2013.

<sup>13</sup> Bulletin of Laws of the Perm Territory, legal acts of the Governor of the Perm Territory, the Government of the Perm Territory, executive bodies of state power of the Perm Territory, issue 6, 17.02.2014.

The study of the rules on preferential rent shows that this mechanism is not sufficiently developed in the regions. Legislation that would promote the involvement of heritage sites in the economy, the adoption of which is envisaged at the federal level, has not yet been adopted. However, the preferential rental rate for heritage properties significantly reduces the cost of the private partner and reduces the payback period of his project. From the point of view of a public partner, preferential rent is a tool for replenishing the budget of the appropriate level both through direct revenues, reducing the expenditure side of the budget for the maintenance of the facility, and through indirect revenues due to the development of cultural tourism, increasing urban and rural activity. At the same time, the establishment of a preferential rental rate is only a preventive measure for the preservation of cultural heritage objects, but is not a measure that allows the development of these objects.

### **Investment Projects**

The other main type of heritage PPPs are various agreements involving investment by a private partner in the restoration of a property, upon completion of which the ownership of the heritage property is transferred to a private partner. For example, a lease agreement on investment terms, after the implementation of which the ownership of the object is transferred to the investor, as well as various concession agreements, etc.

The complexity of concluding such PPPs is related to many factors. For example, as mentioned above in Article 7 of the Federal Law of July 13, 2015 No. 224-FL ‘On Public-Private Partnerships ...’, the heritage objects which are not mentioned as a separate type of PPP objects must refer to an exhaustive list of types of PPP objects. This makes it virtually impossible to apply this law to unused heritage objects that do not belong to any of the types of PPP objects. For example, long-abandoned manor complexes or industrial facilities, which, over the years, are recorded in property registers as ordinary real estate without any special function.

Despite the imperfection of the legislation, PPPs in relation to heritage sites exist and are being implemented. As already mentioned, the main responsibility of the private partner is to ensure the preservation of the heritage object, its restoration or adaptation for modern use in accordance with its features, on the basis of which this object is a heritage object.

Concession agreements in relation to heritage sites are regulated by Federal Law No. 115-FL dated July 21, 2005 ‘On Concession Agreements’<sup>14</sup> (hereinafter referred to as the Federal Law on Concession Agreements). In this law, as well as in the Federal Law on PPP, heritage objects are not separately listed among the objects, but other objects that can be heritage objects are listed, for example, objects of education, culture, sports, objects used for organizing recreation for citizens and tourism, other social and cultural facilities.

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<sup>14</sup> Russian Newspaper, issue 161, 26.07.2005.

The terms of the concession agreement are determined at the federal level. The opportunity to establish reasonable concession payments is provided to the public partner. At the same time, the concession agreement separately specifies the condition regarding the amount of rent for the land plot.

Rental rates for land plots, the ownership of which is not demarcated, is established by a regulatory act of a constituent entity of the Russian Federation. And if a high rent for a land plot is set in a particular region, then this makes the mechanism of the concession agreement in relation to the heritage site ineffective.

There is some inaccuracy in the wording of the Federal Law on Concession Agreements, namely, in the title of the work carried out by the concessionaire at the heritage site. The law refers to the reconstruction of objects, while the legislation on the protection of heritage objects uses the concept of ‘adaptation for modern use’.

The regulation of Part 5 of Article 5 of the Federal Law on Concession Agreements is ambiguous, which does not allow changing the intended purpose of the object. However, many heritage sites cannot and often are not profitable to be used for their initial use, such as old industrial sites that cannot be used for their original purpose. But if the status of the heritage object is considered to be the intended use, then in this case the intended use will not change.

In this regard, the concession agreement is potentially an effective tool not only for conservation, but also for giving new meaning to heritage sites, their involvement in the urban environment. However, a number of terminological inaccuracies can give rise to certain problems in law enforcement.

### **Problems of Implementation of the PPP Mechanism in Relation to Heritage Sites in Russia**

Many note that the implementation of PPP in relation to heritage sites in Russia is associated with numerous problems. One of the main problems is the bureaucratization of the process of agreeing and concluding such an agreement with a private partner. The above-mentioned ambiguities in the wording of the legislation lead to various manifestations of corruption on the part of the authorities, on which the decision to conclude an agreement depends.

Another significant problem is the difficulty of coordinating project documentation for the restoration of a heritage site, which includes several stages with the need for an examination. Here, manifestations of corruption and abuse by the authorities are also possible, since many aspects of the approval of such projects are associated with a subjective assessment of design decisions by specific officials.

But it is not only the strictness of heritage protection legislation that is a problem. Unfortunately, there are projects in which state bodies and officials, on the contrary, in every way ignore any

violations on the part of the investor. As a rule, this is associated with especially large projects, where state corporations or large corporations affiliated with government officials can act as investors. In such cases, the authorities ‘turn a blind eye’ to the violation of the terms of the agreement, violations in the performance of work at the facility, etc. Such cases negatively affect the safety of heritage sites, leading to their damage and loss.

Scientific restoration is a long, painstaking and expensive process, which, when renting a site, can cover most of the rent. In such situations, the investor is not always protected from the arbitrariness of the authority authorized to dispose of state or municipal property. Since the terms of the contract may not allow deducting a large part of the rent against the tenant's investment in the restoration of the heritage site. And there are also cases when, under some insignificant pretext, officials can terminate the lease agreement with the investor. Due to such unfavourable conditions and fears, there is an approach on the part of investors when they try to invest as little as possible in the restoration of the object.

We mentioned that a significant number of heritage objects of state or municipal property are ownerless. However, there are such objects in private ownership, which, in our opinion, is more dangerous. In this regard, the mechanism for the seizure of heritage objects from negligent owners and the transfer of such objects to other investors in the framework of PPP requires improvement.

There are many examples of PPPs for heritage properties. There are both positive and negative examples. However, it is impossible to consider these examples in detail in the prescribed volumes of this article, so we will give one positive and one negative example from the North-West region of Russia, where the authors of the article live.

One of the successful examples of PPP in relation to a country noble estate can be called the estate of Dylitsy or Elizavetino in the village Dylitsy, Gatchinsky district, Leningrad region. This is an architectural monument of the second half of the 18th century, which was rebuilt several times by its owners, and social institutions were located here after the nationalization of the estates in 1917-1918. The last user was a vocational school, which in the 1990s abandoned the buildings of the complex. There was a fire in the main manor house in 1998. And in 2004, the manor was leased for 49 years by private investors, who restored the manor house and some park buildings at their own expense. For a long time, the manor was inaccessible to visitors, and there was also criticism of the quality of the restoration. Currently, excursions are conducted in the manor, a hotel is located in the manor house and events are organized. Unfortunately, many outbuildings of the estate, as well as the manor church of the 18th century, continue to be in an abandoned state and are gradually being destroyed (Figure 1).



**Figure 1.** Church of the Vladimir Icon of the Mother of God in the estate of Dylitsy (Gatchinsky district, Leningrad region), built in 1766, presumably architect Savva Chevakin (18/07/2015) © *Nikolay Lavrentyev*

Among the negative examples of PPP, one can note the Abaza house, on the embankment of the Fontanka River, house 23 in St. Petersburg (Fig. 2). The house of the gold embroiderer I. Forsh of the late 18th century in the 1840s was acquired by the retired State Councilor A. V. Abaza. Then in the 1850s the house passed into the possession of his son A. A. Abaza, chamberlain of the grand ducal court, who was in 1880-1881 the Minister of Finance of Russia. The building became famous for the fact that the music salon of the Abaza house was visited by I. S. Turgenev, F. I. Tyutchev, A. G. Rubinstein, F. M. Dostoevsky, Grand Duke Konstantin Konstantinovich (KR). In 1879, the premiere of P. I. Tchaikovsky's opera "Eugene Onegin" took place here. Since the 1970s the building was listed as a newly identified object of cultural heritage. In the early 2000s a project appeared to adapt the house to the Fontanka-Hotel LLC, for which it was planned to completely dismantle the building, make an underground parking lot and restore only the front historical facade. For this purpose, in 2005, according to the historical and cultural expertise of T. A. Slavina, it was removed from protection. In 2012, an expert E. G. Shcheboleva, commissioned by residents of neighbouring houses, conducted an examination that confirmed the value of the object. In 2013, Fontanka-Hotel LLC, which received the building for rent on investment terms, conducted another examination, which provided for a reduction in the objects of protection of the building, which would lead to significant losses of the original monument. This examination was approved by the Committee for the Protection of Monuments of St. Petersburg (KGIOP), and new items of protection were approved, which the residents were forced to appeal in court. The case in the court was won, and in 2015 KGIOP approved the items of protection according to the examination of 2012. However, these items of protection categorically

do not suit the developer, and in the spring of 2016, the developer prepared another examination from Boris Kirikov, which reduces the items of protection in order to implement an illegal hotel project that provides for a superstructure buildings with three floors, demolition of part of the courtyard outbuildings, alteration of window openings into doorways, minimal preservation of the interiors of the premises (the project was developed by the architectural Studio 44 of Nikita Yavein). However, despite the fact that the next examination was agreed by KGIOP, and the project was fully approved, the investor has not yet begun the implementation of the project, the terms of which the city authorities have extended several times, and the building has been abandoned and unused for many years.<sup>15</sup>



**Figure 2.** House of Abaza of the 18th century on the embankment river of Fontanki 23 in St. Petersburg (15/03/2016) © *Nikolay Lavrentyev*

## **Conclusion**

The PPP mechanism for the preservation of heritage sites in Russia should be recognized as promising. A relatively young institution of private property in Russia and a significant number of heritage objects in state and municipal ownership make PPP one of the priority areas for solving the problem of a large number of heritage objects that are not used by the state and are in emergency or unsatisfactory condition.

At the same time, the PPP mechanism in Russia has a number of problems and is not widespread enough. There are many examples of successful implementation of PPPs in the field of heritage. However, there are also many negative examples when the terms of an agreement or contract

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<sup>15</sup> Zvereva, Ludmila: House of Abaza, in: Herald of People's Freedom, issue 3 (19), September 2016, p. 6.

were not properly implemented by a private investor: failure to meet deadlines, financial insolvency of the investor, violation by the investor of the requirements for the maintenance and restoration of the object, etc.

But there are also many complaints about the actions of state and municipal authorities: corruption, bureaucratization of approvals and signing of PPPs, non-transparency of investor selection procedures, long periods of approval of documentation for the restoration of heritage sites, an extremely overregulated system of approval and issuance of permits for the restoration of heritage sites, etc.

All this, as well as the general political situation in relation to private business in Russia, makes the PPP institution unattractive. In such circumstances, PPP in Russia is of interest only to very large companies, companies with state participation in the capital, as well as persons who have corrupt connections with state and municipal authorities.

The international sanctions imposed against Russia after February 24, 2022, which led to an economic downturn, most likely will not contribute to the development of PPP in the coming years, and will also question the implementation of agreements and contracts already concluded.

## **PUBLIC AND PRIVATE PARTNERSHIP IN HERITAGE CONSERVATION - THE CASE OF POLAND**

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### **Abstract:**

There are two laws for the public and private partnership in Poland. The first offers “common realization of a project which is based on division of tasks and risks between public entity and private partner”. Legally speaking this act include undertakings connected with conservation of cultural heritage but in practical terms it has not found yet significant application in this field. The second act allows “organizing and running of cultural activity”. It enables to establish and run institutions devoted also to protection of cultural heritage. Practice to date has shown that this legal concept works and several museums had been co-created on this basis.

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### **Introduction**

After the departure in Poland in the late 1980s and early 1990s from the principle of a centralised socialist economy and the dogma of state ownership, the former state sector was still active, but as the years passed it was replaced to an increasing extent by the private sector, which eventually became decisively dominant. This phenomenon generally extended also to the protection of cultural heritage, where the state retained only the typical supervisory and control tasks of the administration, while the whole executive activity of restoration, conservation, etc., passed into the hands of independent companies set up by conservators. An almost symbolic example of this process can be seen in the privatisation of the formerly state-owned monopolist in this field, namely the Historic Preservation Enterprise, on the basis of which a number of such specialised entities were created.

Over time, however, it was recognised that the dominance of one sector of the economy was not always beneficial and the possibility of allowing various forms of activity, including mixed ownership, to operate began to be considered. As a result of this process, the legal framework for public-private partnerships was created. In the broad field of heritage conservation that interests us here, it consists of two basic laws. One is a regulation of a general nature, which applies to the scopes of activity indicated therein in all spheres of economic life, and therefore also to heritage conservation. The other, on the other hand, is intended for a specific field of activity, namely the organisation and running of cultural activities, which includes the organisation and running of museums and other institutions of this kind.

## Principles of Public-Private Partnership in General

Pursuant to Article 1, sec. 2 of the Act of 19 December 2008 on public-private partnership<sup>1</sup>, which replaced similar earlier provisions of the Act of 28 July 2005 under the same title<sup>2</sup>, the essence of this partnership is the joint implementation of a project based on the division of tasks and risks between a public entity and a private partner, with the Act defining the principles of this cooperation and indicating the state authority competent to supervise and control it, Article 1, sec.1.

As a first preliminary remark, it should be noted that the quoted provision results in the legislator formally allowing cooperation between entities belonging to two completely different ownership regimes, which are governed by completely different legal principles. On the one hand, we are dealing with public law entities, the so-called public finance sector entities within the meaning of the provisions on public finance, Article, 2 sec. 1a, and on the other hand with private entities, i.e. entrepreneurs, not excluding foreign entrepreneurs, Article 2, sec. 2. The former operate on the basis of extensive rules on the management and protection of public property, for example, on public procurement, while the latter are not so formally restricted and enjoy, for example, the principle of freedom of contract.

On the other hand, it should be pointed out that the cooperation in question may only take place in the following fields, explicitly indicated in Article 2, sec. 4, namely:

- a) the construction or renovation of buildings,
- b) the provision of services
- c) the performance of a work, in particular the fitting out of an asset with equipment which increases its value or usefulness,
- d) or other services - connected with the maintenance or management of an asset that is used for the implementation of a public-private project or is connected with it.

This enumeration covers a relatively narrow scope of possible cooperation, but, as one can easily see, it is interesting and important from the point of view of cultural heritage protection. Undoubtedly, all the practically enumerated fields can be used for various activities related to the immovable monument, for example, its renovation or restoration (a), equipping it with installations, furniture, etc., "devices increasing its value or usefulness" (c), services related to its maintenance or management as a museum or other similar institution, which will undoubtedly constitute "using it for a public-private venture" (d). The broader provision of services (b), which may be conservation services, does not deviate from this objective either.

At the same time, an analysis of the description of these fields indicates that the legislator probably had in mind above all the various forms of participation of private partners in the renovation, maintenance or management of facilities belonging to the public sphere, which will probably not usually cease to perform a public function as well, and the aforementioned activities are often

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<sup>1</sup> Act of 19 December 2008 on public-private partnership, Journal of Laws 2022, item 407, 1079.

<sup>2</sup> Act of 28 July 2005 on public-private partnership, Journal of Laws item 1420 and of 2008, item 1058.

performed more efficiently and more cheaply by private entities. Such an intention can also be seen in the formulation of a number of specific provisions of the Act clearly oriented towards controlling and safeguarding the welfare of such facilities. Thus, one can easily imagine the situation of, for example, a municipality in charge of a castle or a palace, which it will find it easier to protect, maintain, etc., by cooperating with private entities than completely on its own.

Under the provisions of the Act, the cooperation of such partners may take place either on the basis of a special public-private partnership contract or in the form of the establishment of a company.

According to Article 7, sec. 1, the content of the said contract consists of two basic mutual obligations. The private partner undertakes to implement the agreed project against remuneration and to bear all or part of the expenses for its implementation (or by a third party). The public entity, on the other hand, undertakes to participate in the achievement of the project's objective, in particular by making its own contribution. These obligations must be set out in detail in the contract, and the contract will therefore be complex. Among other things, it should specify the consequences of improper performance and failure to perform the obligation, in particular contractual penalties or a reduction of the private partner's remuneration, Article 7, sec. 3, or rules and a detailed procedure for conducting an ongoing control of the implementation of the enterprise by the private partner and for controlling the asset used by the private partner to implement the enterprise, Article 8, sec. 1.

The second of the instruments of public-private partnership provided for by the Act has, as mentioned, the form of establishing a company. The intention to conclude it results, pursuant to Article 14, sec. 1, from the contract presented earlier, in which it can be decided that in order to execute it, the public entity and the private partner will establish a limited liability company or a joint stock company. It is established on the basis of the Commercial Companies Code, for example, by the private partner acquiring shares in a company with the participation of the public entity. The purpose and subject of activity of such a company cannot go beyond the scope specified in the public-private partnership agreement, Art. 14 sec. 2, and the rights from shares or stocks in the company owned by the Treasury are exercised by the government administration body that established the company as a public entity, Art. 14, sec. 3. The company is established for a limited period of time necessary for the execution of the public-private partnership agreement and termination of its affairs, Art. 14a., sec. 1.

### **Principles for the Establishment of Public-Private Cultural Institutions and Museums**

Turning to the discussion of the second of the announced laws, it can be said that the undoubted announcement of the partnership in the field of joint operation of cultural institutions, including museums, is Article 5 of the Act of 21 November 1996 on museums.<sup>3</sup> This is because on its basis,

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<sup>3</sup> Act of 21 November 1996 on museums, Journal of Laws 2019, item 917.

already several years after the political changes in the 1990s, the previous primacy of state ownership of all such establishments was abandoned in favour of full pluralism in this respect. It follows from the unequivocal statement contained in this provision that "museums may be established by ministers and heads of central offices, local government units, natural persons, legal persons or organisational units without legal personality". It further specifies the basic obligations of the aforementioned museum organisers, in particular: 1) ensure the resources needed for the maintenance and development of the museum; 2) ensure the security of the collections; 3) exercise supervision over the museum, Article 5, sec. 4, as well as to report the establishment of the museum to the minister responsible for culture and national heritage protection in order to enter this information in the list of museums maintained by him in the Public Information Bulletin, Article 5b, sec. 3.

The introduction of the aforementioned pluralism opened the way to the possibility of applying the provisions of the several years earlier Act of 25 October 1991 on organizing and running of cultural activity<sup>4</sup>, which provides for the possibility of applying public-legal partnership in the organisation and operation of various, broadly defined cultural institutions, which include museums. This follows directly from Article 21, sec. 2 of that Act, according to which the ministers and heads of central offices who usually create such institutions, as well as local government units, may, on the basis of an agreement concluded both between themselves and “with a natural person, a legal person or an organisational unit without legal personality, create cultural institutions”. Significantly, these partners may also include an entity engaged in national heritage protection activities established under foreign law if it wishes to establish a cultural institution with its seat in the territory of the Republic of Poland, Article 21, sec. 2a. In these agreements, the parties specify the amount of funds contributed by each of them, necessary for the activities of the cultural institution to be created, possibly the duration of the agreement, Article 21, sec. 3, and moreover specify their powers regarding the content of the statute, appointment of the director, liquidation of the institution, as well as indicate the organiser keeping the register of the institution, Article 21, sec. 4.

### **Application of Public-Private Partnership Legal provisions in the Practice of Cultural Heritage Protection**

As already mentioned, the above-discussed 2008 General Law on Public-Private Partnerships, including its 2005 predecessor, was undoubtedly ground-breaking, but as its almost 15 years of existence already indicate, it has not found significant application in the practice of conservation and broader cultural heritage protection. In colloquial terms, the solutions proposed therein have "fallen out of favour" especially in the private sector, for which they are probably too complicated and not promising to achieve the level of benefit required to engage in such projects. This issue will certainly be examined further in order to propose possible amendments and new legislative proposals.

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<sup>4</sup> Act of 25 October 1991 on organizing and running of cultural activity, Journal of Laws 2020, item 194.

The issue of joint operation of museums is quite different. Practice to date has shown that they are indeed co-created on the basis of agreements between the state, local authorities, individuals and legal persons or unincorporated entities.<sup>5</sup> An example of a state-local government museum created on this basis can be the National Museum of Technology in Warsaw, established on the basis of an agreement concluded by two ministers and a local government, namely the Minister of Culture and National Heritage, the Minister of Science and Higher Education and the City of Warsaw.<sup>6</sup> Within this group of museums there are also state-private museums, such as the Józef Piłsudski Museum in Sulejów, established, as indicated in its statute, by the Minister of Culture and National Heritage and the Józef Piłsudski Family Foundation (§ 2) and entered in the register under No. RIK 80/2008 (§ 2, sec. 3), also possessing legal personality (§ 2, sec. 4).<sup>7</sup> An analysis of further statutes makes it possible to note that in practice there are museums with an even more complex founding structure, which can essentially be described as state-local government-private museums. Indeed, in the case of the POLIN Museum of the History of Polish Jews in Warsaw, the founders are the City of Warsaw, the Minister of Culture and National Heritage and the Association of the Jewish Historical Institute in Poland, and the museum is registered under the number RIK 89/2014 and has legal personality (§ 2, sec. 3).<sup>8</sup> Another example of this type of museum with an even broader founding group is the Family House Museum of the Holy Father John Paul II in Wadowice, which was established by the Minister of Culture and National Heritage, the Malopolska Voivodship, the Municipality of Wadowice and the Archdiocese of Krakow. As § 2, sec. 4 of its statutes explains, it is entered in the register of cultural institutions kept by the Malopolska Voivodeship and has legal personality.<sup>9</sup>

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<sup>5</sup> See more about such institutions, I. Gredką Ligarska, P. Gwoźdźwicz-Matan, W. Kowalski: *Umowy w działalności muzeów. Prawo cywilne. Prawo autorskie*. Gdańsk 2019, pp. 27-28.

<sup>6</sup> Statute of the National Museum of Technology in Warsaw of 1 August 2017, <http://strona.nmt.waw.pl/>, read 30 August 2022.

<sup>7</sup> Statute of the Józef Piłsudski Museum in Sulejów, <https://www.e-bip.org.pl>, read 31 August 2022.

<sup>8</sup> Statute of POLIN Museum of the History of Polish Jews in Warsaw, enclosed to Zarządzenie Ministra Kultury i Dziedzictwa Narodowego of 30 May 2017, *Dziennik Urzędowy MKiDN* z 1 czerwca 2017 roku, poz. 31.

<sup>9</sup> Statute of the Family House Museum of the Holy Father John Paul II in Wadowice, enclosed to Uchwała nr 501/10 Zarządu Województwa Małopolskiego of 6 May 2010, <https://domjp2/o-muzeum/statut>, read 31 August 2022.

## LEGAL REGULATION IN TURKEY FOR ENDORSING PUBLIC AND PRIVATE PARTNERSHIPS IN HERITAGE CONSERVATION

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### Abstract:

The ever-mounting needs and problems of heritage places necessitate the joints efforts of responsible actors and institutions more today. Different patterns and profiles of partnerships are being observed worldwide increasingly in the last years in the light of this new heritage conservation paradigm that promotes a collaborative and communicative approach to that end. Turkey, too, has been experiencing more support by private sector investors and entrepreneurs to contribute to cultural heritage preservation. This paper will address specifically to the state-led opportunities in Turkey that encourage and motivate the private sector to invest more on heritage conservation practices as well as related processes and conditions for such a partnership. For this purpose, Turkish legal and institutional framework promoting public-private partnership in heritage conservation will be examined and evaluated. In order to clarify the legal and institutional framework, some examples of partnerships will also be presented. The paper will be concluded with a discussion on gaps and achievements of the Turkish system in terms of partnership in heritage conservation.

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### Introduction

Heritage management includes a variety of activities related to protection, enhancement and valorisation of the built heritage. Protection ensures the physical well-being of the built heritage for future generations, enhancement ensures the access and appreciation of the built heritage by the community, and valorisation ensures the contribution of the built heritage to the community especially in monetary terms. The responsibility of provision and control of these activities has been assigned to the public sector. All these activities require a considerable amount of financial source to be realized. Non-economic value of built heritage for present and future generations and its characteristics as a public good support the idea that heritage activities should be publicly funded (Dubini, Leone, & Forti, 2012).

*“While the need to preserve cultural heritage is widely recognized, the availability of the financial resources to do so is often equally deficient”* (Murovec & Kavaš, 2021, 4). Providing adequate financial sources is one of the difficulties public institutions face in heritage management (Boniotti, 2021). The scarcity or lack of resources in the field of heritage management have encouraged the search for alternative financial models, especially to incentivize private sector involvement in the cultural heritage field (Macdonald & Cheong, 2014). Governments adopt alternative policies and instruments to distribute and/or share the responsibility – especially financial responsibility of heritage management activities towards/with different actors (Dubini, Leone, & Forti, 2012). Creating synergies and cooperation to maximize the optimization of resources is a part of good governance systems for heritage sites (EU, 2010), and coherent with the public governance paradigm, public institutions should have a *“steering role on a network system composed by private and public subjects, whose aim is to achieve common and shared goals”* and *“effective collaboration between public sector organisations and private subjects, i.e., capacity to promote horizontal subsidiarity”* (Badia & Donato 2011, 8-9). Already increasingly diffused in different sectors, public-private partnership has been adopted in heritage field to support public institutions financially through private sector in order to ensure the continuity of heritage management activities.

Heritage management in Turkey is currently under the responsibility of public institutions (particularly the governorates and municipalities) mainly controlled and directed by a central system under the responsibility of the Ministry of Culture and Tourism. In the last decades, legal tools diversifying and enhancing the financial resources allotted to heritage conservation are introduced within the Turkish system, including exclusive approaches on Public-Private Partnership (PPP). Exploring these legal tools on PPP is the main aim of this study. More specifically, the paper focuses on the Turkish legal and institutional framework on PPP by demonstrating examples. The paper first explores the general structure of PPP and its use in the field of heritage management, and then explains the PPP model in Turkey with a specific focus on two important laws regulating the private sector involvement in heritage management. The Turkish system is detailed by two specific examples where the basic legislative system implemented. The paper is concluded with a discussion on the opportunities and challenges of the use of PPP in the field of heritage management.

## **The PPP Approach**

### ***What is PPP and Why do we use it?***

Resulting from the gradual reduction of role and control of governments in different sectors over the last decades under the influence of neoliberal policies, public-private partnerships have been introduced as a new instrument for the provision of increasing number of services which were previously set up and operated by the public sector (Dubini, Leone, & Forti, 2012). Public-private partnership has been approached as an effective instrument to accelerate the provision of public goods and services in cases when government financial and/or human sources are insufficient (Min-Ren Yan, Yang, & Chien, 2019).

Despite the lack of a consistent or agreed specific definition (Murovec & Kavaš, 2021) (Jelinčić, Tišma, Senkić, & Dodig, 2017), in broader terms, a public-private partnership can be approached as an organizational issue with a variety of operational instruments that entails a degree of cooperation between public and private sectors in delivering a public good or service for public consumption by providing specific incentives for both public and private sectors (Bonioti, 2021) (Macdonald & Cheong, 2014). Based on an agreement, public-private partnership is a special-purpose long-term contract between public and private sectors through which some responsibilities, tasks and risks of public institutions are partially transferred to the private entity (Jelinčić, Tišma, Senkić, & Dodig, 2017) (Murovec & Kavaš, 2021). As defined by Jelinčić et al (2017), the usual main characteristics of a PPP are:

- collaborative effort of two or more public and private autonomous entities;
- project concerns a public good or service for public consumption;
- durable character of the project;
- development of mutual products and/or services;
- risk, costs, and benefits shared by both parties;
- regulatory responsibility of the public sector;
- payments to the private sector for the delivered services; and
- mutual added value.

The private entities in this partnership can be in two forms based on their objectives: (1) Profit oriented private entities who seek for a return in the investment either as money or an image – including business sector, natural persons, legal persons with profit objectives or financial institutions; (2) Non-profit oriented entities who not necessarily seek for a return from the investment as in the form of philanthropy – including natural or legal persons with non-profit objectives, associations, foundations, non-profit organisations.

“Public-private partnerships have gained in popularity over the last twenty years as a means for governments to manage the increasing costs and responsibilities of services or ventures traditionally delivered by the public sector” (Macdonald & Cheong, 2014:2). PPP has already been applied in diverse contexts that fall into the responsibility areas of public institutions including the provision of a public good – i.e. bridges, roads, or a public service – i.e. hospitals, libraries, cultural centres (Dubini, Leone, & Forti, 2012) (Macdonald & Cheong, 2014), yet it has not been widely adopted in the cultural heritage field. Recent studies on heritage management assumes that “the best way to ensure both heritage preservation, efficient use of resources, and value maximization for residents and visitors would be the allocation of preservation and protection-related activities under the responsibility of public actors and the outsourcing of enhancement-related activities to municipalities or to private or not-for-profit institutions” (Dubini, Leone, & Forti, 2012:59). The first and foremost stimulus behind this argument is that the culture and cultural heritage management is going through “decentralisation and désétatisation” (Klamer, Petrova, & Mignosa, 2006) process which demonstrates a shift in the function of the public sector - as handing over most of its responsibilities to the private sector, while defining a new, more active role for the private sector (Mannino & Mignosa, 2017). This

shift is not only about decentralisation of the power or responsibilities, but it is also strongly associated with cost sharing due to the large quantity of built heritage requiring costly interventions. The second stimulus is the change in the perception of cultural heritage as a tool to achieve social, economic and cultural development by assigning an active role to the built heritage in order to meet the needs of the society (European Commission – Directorate-General for Research and Innovation, 2015).

### ***The Role of PPP in Heritage***

Despite widespread consensus that the management of cultural heritage as a common good primarily falls under the responsibility of the public sector, the involvement of private sector may nonetheless present a chance for public institutions to benefit from creative funding sources (Boniotti, 2021). The European Commission suggests the public sector to re-evaluate its own strategy and introduce new financial tools in order to encourage the private sector to participate in and make investments in heritage conservation and management (European Commission – Directorate-General for Research and Innovation, 2015). These instruments could be in the form of tax breaks, differentiated value-added tax (VAT) brackets, grants, loan programs, as well as public-private partnership schemes.

PPP in the cultural heritage management is approached as a form of collaboration to pool of knowledge, expertise, capital and other resources from various stakeholders which could lead to a long-term sustainable project for the realization of protection, enhancement and valorisation projects generating social, cultural and economic benefits (Mannino & Mignosa, 2017). Thus, PPP model in heritage conservation is not only a sector-specific model for the management of built heritage in terms of providing adequate financial source, as well skills that might be lacking in the public sector (Boniotti, 2021). In fact, the partnerships in cultural sector can bridge the funding gaps of public sector while providing remarkable investment opportunities for the private sector (Mannino & Mignosa, 2017).

According to (Mannino & Mignosa, 2017), PPP in theory brings the best of two worlds where there is coordination and division of tasks and acknowledgement between parties based on their competencies and expertise, and they share responsibilities together. The public sector has regulatory responsibility over all actions required to ensure the preservation and protection of cultural assets, in addition to providing administrative support and facilitating investments. On the other hand, the private sector is accountable for carrying out the essential operations to improve the asset by providing the financial and human resources, as well as the experience and skills that the public sector may lack.

### **The Turkish Case**

Heritage management in Turkey, as similar to many other countries, falls under the responsibility of the state – as stated by the Constitution article no. 63 indicating that; “*State secures suitable conditions in which historical, cultural and natural values and assets are protected and takes supportive and incentive precautions for this purpose. It also legislates the limitations where*

*these values and assets are subjected to private interests, the contributions to the entitled parties due to those limitations, and the exemption provisions.”*

Heritage management activities confront rising costs because of the increasing amount of built heritage over years in Turkey. Moreover, public interventions are suffering from budget cuts and public institutions are lacking resources to ensure the protection of built heritage. Resulting this, private sector is invited to fill the gaps and play more active role in financing heritage management through public-private partnership schemes regulated by amendments in legal framework of cultural policies.

### **Heritage Management as part of Cultural Policies**

State-oriented cultural policies since the foundation of the Republic in 1923 has radically changed by the 1980s during which Turkey has gone through a remarkable period of economic liberalization (Polo, 2015). Following the withdrawal of the state from provision of various public goods and services and its reduction to the role of regulator, public-private partnership has become the primary engine for cultural production and distribution, and it has reached its peak by the beginning of 2000s in consistent with the neoliberal policies (Sala, 2022).

**Table 1.** Supports given to private sector in the cultural field in Turkish system

<b>Support</b>	<b>Party</b>	<b>Legislation</b>
Incentives Given to Culture Entrepreneur and Investor Certified Facilities	Investors with Cultural Initiative and Cultural Investment Certificate, domestic or foreign legal entities (company, foundation, cooperative) established to carry out activities for the purpose of the Law No. 5225	<ul style="list-style-type: none"> <li>• Law no. 5225 the Encouragement of Cultural Investments and Initiatives</li> <li>• Regulation on Certification and Classification of Cultural Initiatives and Investments</li> <li>• Regulation on Allocation of Immovable Properties to Cultural Initiatives and Investments</li> <li>• Regulation on Allowances for Income Tax Withholding, Insurance Premium Employer’s Share and Water Supply, and Support for Energy Supply Charge</li> <li>• High Council resolution no. 745 on the Allocation of Archaeological Immovable Cultural Properties found in the Archaeological Sites by Legal Entities within the scope of Laws No. 5225 and 5228</li> </ul>
Sponsorship	Real or legal entities supporting cultural activities	<ul style="list-style-type: none"> <li>• Law no. 5228 on Amendments in Various Laws and on Statutory Decree no. 178</li> <li>• Circuit of the Ministry of Culture and Tourism no. 2005/13</li> </ul>

*Source: own elaboration*

When the political party of the AKP (Justice and Development Party) came to power in 2002, it has increased supports given to private sector in the cultural field (Polo, 2015). In 2004, the Ministry of Culture and Tourism enacted two laws to encourage private investments in the cultural sector; Law no. 5225 on the Encouragement of Cultural Investments and Initiatives, and Law no. 5228 on Amendments in Various Laws and on Statutory Decree no. 178 (known as Law on

Promotion of Sponsorship in Culture) (Table 1). These legal arrangements have basically left cultural industries, modern creation, and cultural global market to private actors (Polo, 2015). Even though the basic emphasis of these legal arrangements is on cultural sector, they also regulate provision of specific heritage management activities by the private sector in the form of public-private partnership schemes.

### **Incentives Given to Culture Entrepreneur and Investor Certified Facilities**

#### ***Law no. 5225 on the Encouragement of Cultural Investments and Initiatives***

As stated in the article no. 1, *“the objective of this Law is to ensure that cultural requirements of individuals and public are met, that preservation of the cultural assets and intangible cultural heritage becomes elements of sustainable culture, that the cultural communication and interaction setting are rendered effective, that artistic and cultural values are produced, that opportunities are created and developed for the public to have access to such values, that the national cultural assets are maintained and treated and used as an element generating contributions to the national economy and that Cultural Investments and Initiatives for construction and operation of cultural centres are encouraged.”*

The law aims to meet the cultural needs of the individuals and the society, protecting cultural assets and intangible cultural heritage and make them an element of sustainable culture, as well as evaluating them as a contributing factor to the country's economy, on the other hand, activating the cultural communication and interaction environment, producing artistic and cultural values. With this support given by the Ministry of Culture and Tourism, which aims to create and develop the society's access to these values, it is aimed to encourage, document and supervise domestic or foreign cultural investment and cultural initiatives for the construction and operation of cultural centres.

Investors with Cultural Initiative<sup>25</sup> and Cultural Investment<sup>26</sup> Certificate as domestic or foreign legal entities (company, foundation, cooperative) established to carry out activities for the purpose of this Law can benefit from the incentives provided under the Law no. 5225. The activities to be covered by the incentives or allowances under the cultural investments or initiatives which are specified by this Law are the following (Article 4):

1. Construction, repair and operation of the Cultural Centres
2. Construction, repair or operation of libraries, archives, museums, art galleries, art workshops, film plateaus, artistic design units and art studios and spaces where cinema, theatre, opera, ballet and concert and any other similar cultural and artistic events or

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<sup>25</sup> Cultural initiative certificate is given by the Ministry of Culture and Tourism during the operation phase to the enterprises related to the investment activities for the construction of cultural centres and the areas, buildings and places where all kinds of cultural and artistic activities are produced, exhibited, education and training and scientific studies are carried out, the establishment or equipping of technological infrastructures. It is also possible to obtain a direct investment certificate according to the regulation.

<sup>26</sup> Cultural investment certificate is given by the Ministry of Culture and Tourism at the investment stage to investment activities for the construction of cultural centres and areas, buildings and places where all kinds of cultural and artistic activities are produced, exhibited, education and training and scientific studies related to them are carried out, and for the establishment or equipping of technological infrastructures.

products are held, produced or displayed as well as centres of special research, training or application in the cultural and artistic fields.

3. Use of the immovable cultural assets under Law No 2863 in line with the objective of this Law.
4. Activities involving research, compilation, certification, archiving, publication, training, education and promotion in connection with the cultural assets and intangible cultural heritage.

There are various supports given to private sector, including allowances, incentives, and immovable property allocation. As stated by article no. 5, the elements of incentives to be applied for the cultural investments and Initiatives under this Law are the following:

1. Allocation of immovable property
2. Income tax withholding allowance
3. Allowance for the Insurance Premium Employer’s Share
4. Allowance for water supply charges and support for energy supply charge
5. Eligibility for employment of foreign specialists and artists
6. Eligibility to operate at the weekends and on public holidays

As stated by the Law, the use of the immovable cultural assets under Law No 2863 in line with the objective of this Law and thus allocation of immovable property for cultural investments or initiatives presents an opportunity for public-private partnership in the field of heritage management (Table 2). Detailed in the Article 5; the Ministry of Culture and Tourism is entitled to allocate immovable properties, which are considered appropriate by the Ministry for the Cultural Investments and Initiatives under this Law. These immovable properties could be;

- Those registered in the name of the Treasury, upon a request by the Ministry and affirmative comments of the Ministry of Finance, within maximum three months,
- Those which are owned by the public administrations and local administrations included in Schedule (II) annexed to Law No 5018 on the Public Financial Management and Control are allocated to the Ministry upon a request by the Ministry and affirmative comments of the relevant administration upon registration with the title deeds department in the name of the Treasury within maximum three months free of charge.

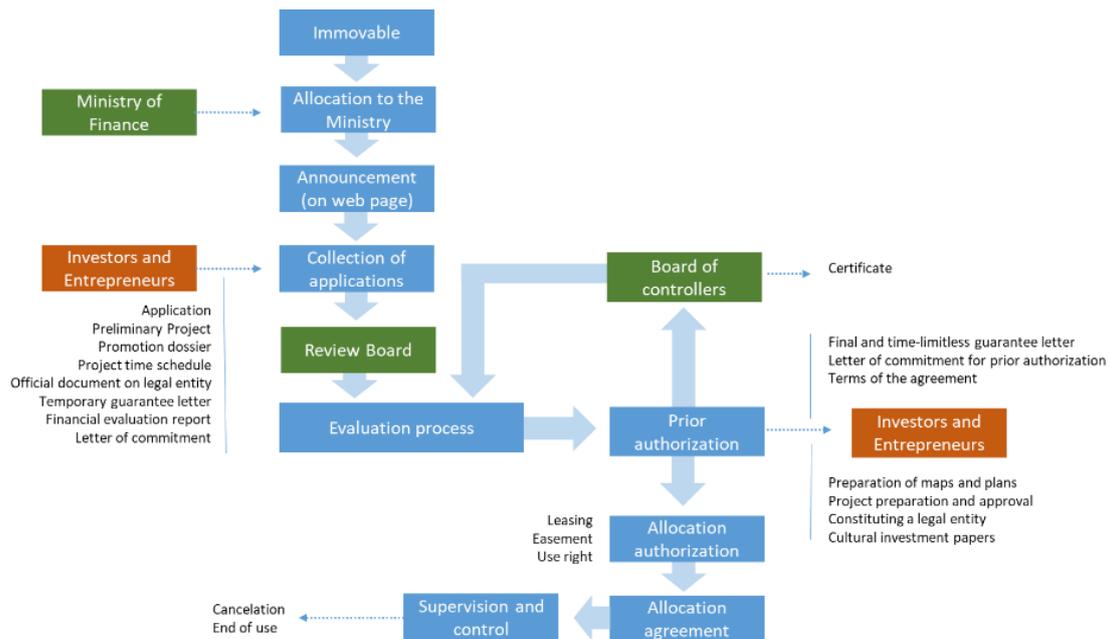
**Table 2.** Details of “Allocation of Immovable Property” incentive

Type of Incentive	Explanation about Incentive	
Allocation of Immovable Property	Usage fee calculated as 0.5% of annual property tax 1% of annual operating revenue (starting after 5 years of operation) 0.1% of immovable value as pre-authorization fee	If property tax value has not been determined, the fee is determined by the Board of Controllers. Usage fee is increased annually by considering the Producer Price Index

*Source: own elaboration*

The rules set by the Law for allocation are listed as follows;

- Any immovable property owned by the Treasury, which is allocated to the Ministry, may be allocated by the Ministry under this Law. The provincial special administrations and municipalities may allocate any immovable property owned by them as per the provisions of this Law upon affirmative comments of the Ministry.
- The principles and periods in connection with the allocation and leasing of such immovable properties and institution of the independent and permanent right of construction on them as well as the charges on the basis of the location of immovable property, expiry of rights and other conditions are jointly determined by the Ministry of Culture and Tourism and Ministry of Finance notwithstanding Law No 2886 on the Public Procurement (Tenders) Law.
- Institution of servitude on such immovable properties including the independent and permanent right of construction on them and institution of servitude on any of such property, which is necessary for infrastructure, in favour of the public entities that will achieve such infrastructure are carried out by the Ministry of Finance subject to the terms determined by the Ministry of Finance upon affirmative comments of the Ministry of Culture and Tourism.
- Any structures, facilities and annexes thereto located on the immovable property allocated as per this Law, for which allocation is cancelled or allocation term expires are automatically transferred to the Treasury free of charge. Any parties concerned in connection therewith may not claim any rights or costs thereof.
- The procedures and principles in connection with the implementation of this paragraph are set forth by a regulation to be jointly issued by the Ministry of Finance and Ministry of Culture and Tourism.



**Figure 1.** The process of “Allocation of Immovable Property” according to Law no. 5225 © Modified and translated from <https://kvmgm.ktb.gov.tr>

The process of allocation of immovable property (Figure 1) starts with the identification of immovable and then its allocation to the Ministry of Culture and Tourism. Thereafter the Ministry determines the terms and methods of use, and announce the allocation on the webpage. After getting applications for the allocation, the evaluation board evaluates the applications and pre-authorization period starts. Meantime, the controller board approves the certification either as cultural investment or as cultural incentive. By the approval of final projects, the usage period starts. During the usage period, the supervision and control of the allocation is conducted by the Ministry.

### Examples

The Ministry of Culture and Tourism officially announced 5 immovable properties (Table 3) which have been allocated as “special facilities on cultural purposes”, including permanent or temporary exhibition halls, conference halls, meeting rooms. These immovable properties have been allocated to private investors by using the PPP model.

**Table 3.** Immovable properties allocated by the Ministry of Culture and Tourism for the use of special facilities on cultural purposes

Name of the Special Facility	City located	Company
CerModern Arts Centre	Ankara	TARGET Company
Yüksel Emirtan Culture and Art Foundation Museum	Ankara	Yüksel Emirtan Culture and Art Foundation
Evvel Zaman Culture House	Rize	Evvel Zaman Tourism Company
Sakıp Sabancı Mardin City Museum	Mardin	Hacı Ömer Sabancı Foundation
Hakkari Kayme Palace	Hakkari	Seyyid Taha Nehri Hakkari Hazretleri Education and Culture Association

Source: Modified and translated from <https://kvmmg.ktb.gov.tr>

#### ***CerModern Arts Center***

Rented for 25 years

Started by 15.09.2009

Project: Uygur Architecture

<https://www.cermodern.org/home.html>



**Figure 2.** A view of CerModern at present day © <https://rayhaber.com/>

The buildings where CerModern Arts Centre is located were used to be the train maintenance sheds and ateliers constructed in the 1920s. The complex has been completed in 1927 and active during the early Republican Period; however, the complex has lost its basic function and became unusable as the railways have followed a different development strategy due to the end of the era of steam locomotives. The renovation of the area to be used as a museum has started in the year 1990 by the initiatives of the Contemporary Arts Foundation, yet it has not been implemented due to financial shortages. Then, the complex has been allocated to TARGET Company on September 15, 2009 – rented for a period of 25 years to be renovated as an arts centre. (Mimdaporg, 2010) (Yalav-Heckeroth, 2017) (Yavuztürk, 2017)

The project was prepared by Uygur Architecture, with respect to the structure’s history, the connection to the old railway and the architecture of the early Republican era are still intact and can be felt in the gallery’s visual spirit. The complex is established on an area of 11,500 square meters and consists of an exhibition area, conference hall, library, shop, artist rooms, studios, cafeteria, sculpture park and parking lot. (Arkiv, nd)



**Figure 3.** Present and previous views of the buildings used as CerModern © <https://www.cermodern.org>

### ***Erimtan Archaeology and Art Museum***

Easement for 25 years

Started by 18.12.2012

Project: Ayşen Savaş, Can Aker ve Onur Yüncü

<https://erimtanmuseum.org/en>



**Figure 4.** A view of Erimtan Museum at present day © <https://www.arkitera.com/>

Housed in three old Ankara buildings, the Museum includes indoor and outside exhibition areas for permanent and temporary exhibitions, a multi-purpose hall, a workshop room that hosts programs for visitors of all ages, a museum shop, a cafe, and a library.



**Figure 5.** Before-After views of buildings of Erimtan Museum © <https://twitter.com/erimtanmuseum/>

As of the first quarter of 2015, three old Ankara houses in Kale Square, one of the oldest settlements in Ankara, have been transformed into today's museum building by preserving their historical and architectural values. While the exterior architecture represents the historical traces of these dwellings, the interior provides the unique experience of a comprehensive museum space.

The definitive line that separates the old from the new is emphasized with the use of materials characteristic of Ankara, and surfaces made of Ankara stone and exposed concrete serve as tools that further demonstrate the tension running through this line. The walls of the houses were interpreted in such a way as to reframe the museum and to accommodate the services and the necessary technical infrastructure. (Erimtan, nd)

The aim was to document and protect the architectural and cultural values embodied in these buildings and the historical information compiled over the years. Due to the limited information obtained from the rare documents it is assumed that the structures belong to the late 18th century. Single-storey, modest buildings that lost their use-value were abandoned, especially after the fire, and were excluded from the list of cultural assets with the claim that they have completely lost their structural integrity. (Özkan, 2018)

## **Discussion**

Cultural heritage is a common good and shared resource, and “like other such goods, it can be vulnerable to over-exploitation and under-funding, which can result in neglect, decay and, in some cases, oblivion.” (Murovec & Kavaš, 2021:4) Protection of cultural heritage is therefore a shared responsibility.

Justifications for PPP in cultural heritage conservation and management can be grounded on three basic premises:

- Public resources are insufficient to ensure the protection of cultural heritage, so that PPP offering re-use, infrastructure and adaptation for other purposes is a win-win response.
- The management of cultural heritage is undergoing a shift in relation to the roles of the public and private sectors. The new strategy requires a more active role for the private sector.
- The new perception presents cultural heritage as a tool to achieve other aims such as social, cultural and economic development.

These premises have also characterised the Turkish legal framework, and legislative arrangements in 2004 which have introduced a series of tools allowing different degrees of involvement of the private sector in the cultural heritage management. Although there are still few examples of allocation of immovable cultural assets to private sector by using PPP model, and the responsibility for heritage conservation and management still rests with the state budgets mostly, existing examples demonstrate that the partnership is efficient in terms of physical maintenance of cultural assets and integration of the heritage into daily life.

The growing interest toward partnership schemes results from various opportunities they present - such as the multiplicity of interactions they generate, the variety of operational instruments by which they are implemented, and the scope of competencies pertaining to the various sectors involved in the collaboration (Boniotti, 2021).

1. Changing roles: The PPP strategy appears to be a product of neoclassical economic ideology where private sector is considered as profit-seeking actor, and not unexpectedly, the majority of its practical implementations appear to have been developed for project funding (Boniotti, 2021). However, a paradigm shift is required “...in which the public partner becomes more market sensitive, including being less risk averse, and the private partner accepts more social responsibility, possibly accepting lower-than-usual profit margins” (Macdonald & Cheong, 2014:26).
2. Continuity: As an emerging way of transacting between public and private organizations, PPP in the field of cultural heritage should be designed carefully in order to ensure continuity in conservation activities and valorisation processes alongside a proper planning approach to avoid fragmented and unvirtuous projects or even having to resort to divestment programs (Boniotti, 2021).
3. Privatization: PPP is offered as a win-win solution where public resources are insufficient to guarantee the preservation of cultural assets. “Yet, ... there are also risks of “heritage grabbing”, where public heritage values and opportunities are privatized for short-term gain and immediate opportunity” (Larsen, Hoang, & Huong, 2019:8). PPP is acknowledged to have both opportunity - as filling a void and contributing to long-term cultural preservation, and the risk as leading to the privatisation and commercialization of common goods and compromising long-term conservation (Jelinčić, Tišma, Senkić, & Dodig, 2017). Therefore, the focus should be on what to do and how to do it in order to maximise PPP's good potentials and avoid or mitigate its negative social, environmental, and economic effects (Larsen, Hoang, & Huong, 2019).
4. Balance: Considering the diverse motivation of different partners in PPP, the success lies in the appropriate balance between the needs and capabilities of partners. “PPPs can be defined as “weak” if decision rights, costs, and risks are centred on one partner, or “strong” if they are more balanced between all partners” (Macdonald & Cheong, 2014:16). The right balance obtained would ensure the long-term goals of the agreement.

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## HOW CAN THE PPP MODEL BE OF USE IN DEALING WITH REGULATIVE ISSUES?

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### Abstract:

According to EU studies an estimated 300 000 people work directly in the cultural heritage sector in the European Union (EU) and as many as 7.8 million jobs are created indirectly by the sector. In terms of gross value added (GVA), the material cultural heritage contributes 1.6 % to the total business economy and 3.4 % of the total services economy. (Espon WORKING PAPER Measuring economic impact of cultural heritage at territorial level).

How can a PPP type cooperation in the CH sector contribute to improved influence in the EU regulative work? This paper highlights the points of common interest between the possible PPP parties and how the PPP model can be a model for such work to be coordinated towards creating better EU regulations. In short, the aim of a PPP cooperation is to make the EU regulative process more predictable and contribute to an efficient product and value chain for the conservation of cultural heritage. How can this be achieved using the PPP principle?

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### EU Regulations. The EHLF. What We Know.

Through the work of the European Heritage Legal Forum (EHLF <https://ehhf.eu/standing-bodies/european-heritage-legal-forum/>) since 2008, we have experienced that EU regulation intended for other sectors than cultural heritage (CH), increasingly come into conflict with heritage conservation issues and principles. This issue of unintended negative effects of EU regulations on CH is not solved in a satisfactory manner. That should be cause for concern among CH professionals and institutions.

The EHLF has documented that such issues are an important challenge. The issue is highly complex as impacting regulations are spread over the whole range of social sectors, like building regulations, construction, energy, chemicals, and environment, just to mention some. This is a situation the heritage sector is struggling to master.

That every nation has a specific national heritage legislation does not help us much in such EU regulation cases. The regulations intended for other policy sectors, (generally) override national heritage regulations the moment they are incorporated in national regulations / legislation.

The question in this paper is if and how a PPP organised cooperation could improve CH sector influence in the regulatory EU processes. The heritage sector sorely needs to find new organisational modes and engage more energetically in the regulative process than it has before. Improved coordination and cooperation with private sector actors can only be beneficial.

### **The PPP Players - How Do Their Interests Converge**

The underlying assumption here is that all the players have a mutual interest in quality conservation of CH. The motives may differ, but the objective is shared. This is the basis for a cooperation, also in influencing development of EU regulations.

#### ***The Public Sector***

This sector includes central Governments, regional and Municipal authorities. The development and implementation of EU regulations is a statutory task for the competent national authorities and other heritage government agencies. Similarly, the public sector is responsible for all building permissions and public funding of CH works. In Norway the Municipalities are – according to the planning and Building act – responsible for engaging in a dialogue and cooperation with (voluntary) citizen initiatives in conservation and conversions of the historic built environment.

#### ***The Private - The Non-Government Sector***

This sector is not uniform; it includes both NGO's, associations, foundations, and business enterprises. The private sector enterprises are actively working to generate a surplus and to pay the 'workers'. The Foundations can have different motives, some are public utility organisation benefiting the population (non-profit) and they co-finance CH conservation work. Some foundations are organisational tax structures but can also be caretakers of (important) CH assets.

### **The EU Regulative Process**

Both public and private sector actors are active in the process, 'lobbying' as interested parties. The negotiations to draft the regulations 'formally' take place in an expert group that elaborates on the text of the regulations.

National and private interests are promoted, and unanimity is gradually achieved. Here the actors from the cultural heritage sector (producers, craftsmen, education institutions, and other

organisations) need to improve their efficacy in lobbying and increase cooperation between themselves and promote a more united and unified approach from CH players.

The decisions that affect cultural heritage are created in such expert groups. And it is here the CH sector can harvest the benefits of a coordinated and united approach, involving both private and public sector.

The result of the expert group deliberations is, in the end, what decides the availability on the market for cultural heritage relevant products, services, certification, and (skilled) competencies (like: windows, doors, roofs, paints, varnishes, energy efficiency, traditional crafts, and more).

The EU internal impact assessment of EU regulations include a review of the cultural heritage impact. Such internal impact assessment could be used more frequently by the Commission. The impact assessment would allow the interested CH parties to make a specific review of the impacts on CH of the proposed regulation.

Through concerted activity of the public sector CH players, progress in the specific considerations of CH in EU regulations has been made. In the last decade several policy resolutions supporting and promoting cultural heritage have even been voted by the EU Presidency.

The European Heritage Legal Forum (EHLF) will need to continue its work and increase its coordination between member states and its cooperation with the EU (DG Culture) and the newly established ‘EU Heritage Expert Group’.

The ‘bottleneck’ in this work is first and foremost a question of lacking work-capacity of public authorities to engage with the regulative processes and CH issues. Manpower is also a bottleneck at the national level where CH competent authorities are generally understaffed. There is need to improve manpower resources in the national / regional heritage administrations. Some mitigation of the bottleneck could be expected by a closer cooperation with the private sector.

Monitoring, diagnosing regulation effects and influencing the regulative process demands time, involves a lot of (committee) work.

It would be beneficial to all parties that the monitoring and lobbying capacity of the CH sector could increase. Here is where the public actors could strongly benefit from a more coordinated cooperation with the private sector. And vice versa.

### **The PPP Model – The Cooperative Model**

The rationale is since there are (some) common interests between the public and the private sphere. Where there are common interests there are opportunities to cooperate towards achieving a common goal.

The products, competencies, skills, and services needed for CH management are all available on the ‘market’. The product producers, the services and skills training providers have an interest in being able to offer their ‘products’ on the market and to achieve optimal predictability from the regulations affecting these ‘products’. The public sector also needs predictability in planning and executing necessary conservation and valorisation measures.

The EU defines PPP: “the principal focus of PPPs should be on promoting efficiency in public services through risk sharing and harnessing private sector expertise”

Developing and influencing regulations is a statutory task of government sector. But such work is not specified in the EU PPP Handbook which is focused on built heritage projects.

This does not mean that a PPP cannot be established to cooperate of regulatory issues, but their organisational structure would be different from traditional PPP cooperation’s concerning built heritage. In principle the CH interests of the public administrations has potential ‘allies’ in the private sector, who also wish to achieve more predictable and CH friendly flexible regulations. The issue is clear; the common interests should be to assure predictability for products and services and assure the possibility for the application of ICOMOS conservation principles.

There are common interests in many cases between the private and public sectors. We do not need go into more details. The crux of the matter is that the CH sector is presently not structured or organised to handle the challenges posed by the many EU regulations that impact on CH management. So how do we progress?

### **How Can We Organise the Work?**

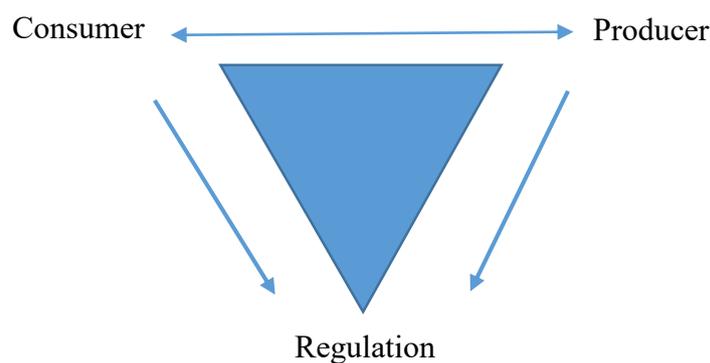
The present work of monitoring and influencing EU regulations for their (inadvertent) effects on CH is manpower intensive. At least it is so for the public authorities. This manpower is presently not calibrated to tackle such work.

- One major objective is to develop an organisation where this burden can be more optimally shared between public and private partners. The principal focus is on “promoting efficiency in public services (regulations) through engaging self-interested private sector expertise”
- To Establish a contact an organisational coordination point. The task to identify, coordinate and influence the regulative process. This could be an organisation like Europa Nostra, the EHLF (European Heritage Legal Forum) or the Commission itself through DG Culture or the Expert Group on CH.
- To develop a ‘division of work’ where the policy aspect of the regulations is reviewed by authorities and by the private sector in concert and that reviews propose CH amendments for specified products and services, as for educational and research issues.
- Such trans sector cooperation actions have been applied before in the EU, i.e., the Construction Industry Platform (CIP) which was intended as a cooperative platform between the construction industry and CH. A PPP collaboration for CH could learn from this experience.

- ICOMOS / ICLAFI is in a position to propose to the EHHF (European Heritage Forum <https://ehhf.eu/>) and to DG Culture ([https://ec.europa.eu/info/departments/education-youth-sport-and-culture\\_en](https://ec.europa.eu/info/departments/education-youth-sport-and-culture_en)) that they explore the possibilities for establishing a private public partnership to monitor EU regulations for unintended negative consequences for Europe’s cultural heritage.

ICCOMOS has already completed a Quality Guideline for the Commission, DG EAC, to assure that EU funding of cultural heritage is in accordance with the best conservation principles. A monitoring observatory could be a relevant follow-up, to assure that the regulations allow for the Quality Guidelines to be implemented.

An excellent occasion to launch the PPP idea and explore the position of the private sector would be the Denkmal Trade Fair in Leipzig, 24. - 26. November 2022, European Fair for monument preservation, restoration and redevelopment of old buildings. At the Fair the private sector products and services are gathered together. That is an excellent occasion to explore if there is interest in the private sector for such a cooperation on EU regulations.



**Figure 1.** The theoretical illustration of a PPP to monitor and influence the EU regulations

## THE GERMAN FOUNDATION FOR MONUMENT PROTECTION: A SUCCESSFUL PUBLIC-PRIVATE PARTNERSHIP

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Werner von Trützscher studied law and political science at Munich University, was a trainee at the bank Société Générale in Paris, got his doctor's degree (Ph.D.) in International Law at Munich University (1974). He started to work as a lawyer in an international law firm in Munich, then worked in the public administrations of the states of Bavaria and Thuringia, where he held different positions, among others head of the Thuringian State Office for the Preservation of Monuments. Dr. von Trützscher is engaged in ICOMOS since 1984. He held the position of Secretary General of the German National Committee, was a member of the Executive Committee of ICOMOS and founder and first president of the International ICOMOS Committee on Legal, Administrative and Financial Issues (1997 – 2003).

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### Abstract:

The author describes the foundation of the German Foundation for Monument Protection in 1985 and its development into Germany's largest public-private partnership initiative in heritage conservation. Details of the number of donors, the number and the various types of historical buildings and objects supported and the financial volume of the support all coming from private sources are set out. The Foundation's extensive public relations work is also described. This includes the publication of a magazine and books on the subject, school and youth programmes, the organization of a Heritage Day every year, etc. Numerous honorary local curators support the tasks of the Foundation. In concluding the author shows a few prominent examples of the successful work of the Foundation.

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After the Second World War in the 1950s and 1960s, the situation of monument preservation in Germany was dramatically bad. Little consideration was given to historic buildings in the creation of housing that was necessary after the war. The then acting German President Walter Scheel stated in a speech in 1975 that more architectural monuments had been destroyed since 1945 than in the Second World War.

In this situation, the responsible Federal Ministry and committed monument conservators began to look for ways to rebuild cities with due regard for the historical substance. The focus turned to neighbouring countries. The positive effect of foundations for the preservation of historical monuments was recognized. The Dutch association "Hendrick de Keyser" and the British "National Trust" were and are exemplary.

The idea of establishing a foundation to promote the preservation of historical monuments in Germany matured. The project was driven forward in particular by Professor Kiesow, the highest monument conservator in Hesse and at the time the chairman of the German Association of Monument Conservators. A first obstacle was that according to the regulations of the time, a foundation capital of 500,000 German marks (equivalent to about € 250,000) was required for the approval of a foundation. In 1981, after years, Professor Kiesow succeeded in convincing the Chairman of the Board of the Dresdner Bank, one of the biggest German banks to support the establishment of the foundation.

Subsequently, other leading representatives of the German business community became interested in the project of a foundation and the German President agreed to take on the patronage of the foundation to be established. Finally, on 17 April 1985, the German Foundation for Monument Protection was solemnly established in the presence of the German President.

The German Foundation for Monument Protection is a non-profit foundation with legal capacity under civil law. As a non-profit legal entity, it is exempt from taxes. For donors, non-profit status means that their donations to the foundation are tax-privileged, i.e. they can be deducted from their taxable income.

Since its establishment, the German Foundation for Monument Protection has gained more than 200,000 friends and supporters, who have contributed with active help and donations to the fact that the foundation has already been able to support around 6,000 monuments with more than half a billion euros. Today the foundation finances or co-finances around 600 projects of monument conservation annually. The foundation not only supports the preservation and restoration of monuments, but also promotes understanding and awareness of monument protection and preservation through various projects. Furthermore, it is active in training in the field of monument preservation. The following is an overview of the various programs and projects.

The **Tag des offenen Denkmals (Open Monument Day)** is coordinated nationwide by the German Foundation for Monument Protection and is a protected trademark of the foundation. Every second Sunday in September, millions of visitors set out on tours through the past. The free event aims to inspire all ages and all groups of society. Far more than 7,500 monuments are open to the public - and under a different motto every year. From colour on monuments, wood as a material, romantic monuments of the 19th century or uncomfortable monuments beyond the good and beautiful: each year the focus is on a different aspect, there is always something new to discover.

In one of the 16 **Jugendbauhütten (Youth Building Huts)** young people aged 16-26 can learn for a whole year, traditional handicraft techniques in workplaces, apply them to the original and feel and experience the special nature of the real and authentic with their own hands. The model for the youth building huts are the medieval building huts where people lived and worked together. Here, the apprentice learned from the master on the original. Various seminars on style and materials, research and working methods, the basics of monument preservation and the significance of European cultural heritage complement the practical work on monuments.

Around 5,000 young people have so far completed a voluntary social year in heritage conservation in the youth building huts and discovered their enthusiasm for cultural heritage there. Some have found not only a passion but a vocation here: Often, the participants later decide on a profession in heritage conservation or in one of the traditional crafts. The project is under the auspices of the International Youth Community Services one of the oldest and largest providers of extracurricular youth education work.

The school program **denkmal aktiv - Kulturerbe macht Schule (monument active - Cultural Heritage makes School)** aims to communicate the value and significance of monuments to schoolchildren. Monument active supports schools in integrating the subject of cultural heritage and monument protection into the school curriculum. Educational materials on cultural heritage and monument protection are available to all teachers free of charge with worksheets for the classroom. Schools participating in the program are supported with 1900 €. Last school year 59 schools participated in the project. This program is under the patronage of the German UNESCO Commission.

The **Denkmal Akademie (Monument Academy)** is the educational institute of the German Foundation for Monument Protection for in-service training in monument conservation. At seminars, conferences and workshops, architects, town and village planners, employees of building authorities, but also interested private individuals or monument owners are informed out about the latest trends, research results or issues in monument conservation.

The **Stipendienprogramm "Restaurator im Handwerk" (scholarship program (for further vocational training to become a "Restorer in the Crafts or Master Professional for Restoration in the Crafts"))** is intended to give craftsmen the opportunity to acquire the skills to work in the special field of heritage conservation and to provide them with the competences in handling historical materials and techniques as well as the knowledge of modern methods suitable for heritage conservation while working. The scholarships are endowed with 3000,- € each.

The **Bundespreis für Handwerk in der Denkmalpflege (Federal Award for Craftsmanship in Monument Conservation)** has been awarded by the German Foundation for Monument Protection and the Central Association of German Crafts since 1993. On the one hand, the prize is intended to motivate private monument owners to demand craftsmanship and quality, and on the other hand, to draw the attention of the skilled trades to the rewarding field of monument conservation.

**Monumente - Magazin für Denkmalkultur in Deutschland (Monumente - Magazine for Monument Culture in Germany)** reports on interesting and entertaining facts, on the precious and the curious from the world of architecture. The focus is on the projects whose restoration is supported by the German Foundation on Monument Protection. The magazine appeals for donations for monuments in need, which would fall into disrepair without the help of readers. In addition, **Monumente** keeps all those interested in monuments up to date on current developments in monument conservation and provides information on the foundation's diverse projects and activities. The 76-page magazine is published six times a year with a circulation of around 180,000 copies.

**Monumente Publikationen - Der Verlag der deutschen Stiftung Denkmalschutz (Monuments publications: The publishing house of the German Foundation for Monument Protection)** The products of **Monumente** publications bring the world of monument conservation

to the home. Books, maps, games, calendars and accessories - all on the topics of art and culture, architecture and history - show how diverse and unique monuments can be.

The **Multimedia touring exhibition “Liebe oder Last!? Baustelle Denkmal” (“Love or Burden?! Building Site Monument”)** is an experience for all senses and impressions that shows monument conservation from completely new perspectives.

**Grundton D – Benefizkonzerte für den Denkmalschutz (Grundton D - Fundraising Concerts for the Protection of Historical Monuments)** concert series offers musical masterpieces in special sound spaces. It takes place in selected monuments. Since 1990 the German radio station Deutschlandfunk, in cooperation with the German Foundation for Monument Protection, has organized this unique concert series, which is broadcasted throughout Germany and benefits monuments in need. More than 300 concerts have inspired visitors so far - and spread the idea of monument protection.

**Monumente Reisen (Monument tours)** offer mostly five-day study tours visiting unique monuments in different regions of Germany together with architects and experts from the German Foundation for Monument Protection.

In order to cope with all these tasks, the **German Foundation for Monument Protection** had a **budget** of about 40 million euros in 2020. Of this sum, about 18 million euros came from donations (about 15.5 million) and inheritances (about 2.5 million). There were exactly 181,270 donors, of which 140,382 donated less than 100 euros, and the rest donated larger sums. Furthermore, the foundation received in 2020 approx. 17 million euros in donations from the Glücksspirale a number lottery organized by the state lottery companies.

Of the expenditure, 57% went to direct monument conservation in 2020; 18% in education and awareness raising; 14% in advertising and public relations and only 9% in administration.

According to its statutes, the German Foundation for Monument Protection can also temporarily or permanently take endangered cultural monuments into its ownership.

In addition to its own funds, the German Foundation for Monument Foundation manages over 250 **fiduciary foundations**. A fiduciary foundation is a dependent foundation. The purpose of the foundation is described in a donation agreement. The capital income flows into monument conservation measures to promote the purpose described in the statutes. In 2020, the fiduciary foundations supported the preservation of monuments with approx. 1.8 million euros.

In 2020, the German Foundation for Monument Protection had 174 employees working under two **Executive Boards**, who in turn are responsible to the honorary Foundation Board. In addition to the **Foundation Board**, there is a **Board of Trustees** with representatives from business, science and the arts. A **Scientific Commission** assesses proposals and funding applications in an expert capacity and thus advises the Boards.

The German Foundation for Monument Protection is supported throughout Germany by **local curators** who work on a voluntary basis. More than 500 volunteers are now working for the German Foundation for Monument Protection - in more than 85 locally organized local curatorships.

The German Foundation for Monument Protection cooperates with a large number of associations, initiatives, foundations with legal capacity and public institutions. However, its funds should not be used to relieve the public sector, in particular the federal and state governments, of its obligation to protect monuments. As Germany's largest private foundation, its mission is to complement the efforts of the public sector in a public-private partnership.

***Author Note:***

*This article is based on publications and oral information from the German Foundation for Monument Protection.*

## WAYS AND METHODS FOR PUBLIC-PRIVATE PARTNERSHIPS: CITIZENS' PORTAL AND VOLUNTEERING – POSSIBILITIES FOR INVOLVING CIVIC ENGAGEMENT IN BAVARIAN HERITAGE CONSERVATION

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### Abstract:

Since 2012, the Bavarian State Conservation Office has been pursuing a course of broad involvement of committed forces from the public and local communities with the program "Denkmalpflege 2020 - Bewahren durch Erklären und Unterstützen (Monument Preservation 2020 - Preservation through explanation and support)". In addition to the "Kommunales Denkmalkonzept (municipal monument concept) "for the gradual development of town centers in line with the preservation of historic monuments with the involvement of local players, the "Bürgerportal Denkmalpflege (citizens' portal for the preservation of historic monuments)" was founded as an interface between the state's preservation of historic monuments and civic involvement in order to strengthen awareness and commitment among the population.

### The Citizens' Portal – an Internal Interface Between Heritage Conservation and the Public Interested in Monuments

Since 2016, the Bavarian State Conservation Office has been pursuing a new approach in dealing with the public and communicating the concerns of monument preservation with the concept "Monument Preservation 2020 – Preserving through Explaining and Supporting". The aim is to create a partnership between state monument preservation and private commitment in order to preserve the almost 115,000 monuments and around 49,000 archaeological monuments in Bavaria

for future generations and to build up a greater awareness of their importance among the population.<sup>1</sup>

Preserving through explaining and supporting also takes into account changed demands and at the same time counteracts the widespread prejudice of a state administration that is far removed from reality and authoritarian, always curtailing the allegedly "unrestricted", constitutionally guaranteed right to property: the reception and communication behaviour of society is actively influenced by improving and expanding opportunities for information transfer, contact and exchange between the authorities and citizens.

This begins with the recurring question of where monuments are located and in what context they are related. Here, the geo-based database of the "Bayerischer Denkmal-Atlas (Bavarian Monument Atlas)"<sup>2</sup> offers quick and, above all, almost daily access to the status of monuments or archaeological sites, combined with initial information on the object. In this way, initial questions can be clarified without much effort, such as whether a building is recognised and listed as a monument, whether it is protected as an individual monument or part of an "ensemble", legally classified as a monument as well, but also which building type and age it is assigned to. A particular advantage is the uncomplicated map display that can be called up online, which – as is often the case with archaeological monuments – provides a good overview and quick access even without exact address details.

This first level of providing information is supplemented by better accessibility and extended responsibility of the central state heritage agency of the Freestate of Bavaria, no longer only for monument owners, but also for committed citizens, who deal with the issues of monument protection and preservation out of interest, passion or personal concern. Behind this is the experience that monument conservation also moves people emotionally, both positively and negatively – which means that enthusiasm and rejection can grow in equal measure. It is therefore a matter of involving and supporting those people more who are committed and who can also pass on the concerns of monument conservation to their friends and acquaintances.

Historic preservation will be particularly successful if it sensibly complements the technical competence of the state authorities with all their specialists with the competence and, above all, the presence of civic engagement, which is not only associated with pronounced local expertise, but also with an active local presence. A fruitful discourse can explore new forms and possibilities of complementary cooperation.<sup>3</sup>

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<sup>1</sup> Pfeil, Mathias ed., <https://www.blfd.bayern.de/blfd/ansprechpersonen/amtsleitung/index.html#navtop> (access on August 3rd, 2022): Denkmalschutz und Denkmalpflege in Bayern 2020. Bewahren durch Erklären und Unterstützen (Conservation and preservation of historical monuments in Bavaria 2020. Preserving through explaining and supporting), in: Denkmalpflege Themen Nr. 6, 2015, [https://blfd.bayern.de/mam/information\\_und\\_service/publikationen/denkmalpflege-themen\\_denkmalpflege-denkmalschutz2020\\_2016.pdf](https://blfd.bayern.de/mam/information_und_service/publikationen/denkmalpflege-themen_denkmalpflege-denkmalschutz2020_2016.pdf) (03/08/2022).

<sup>2</sup> <https://geoportal.bayern.de/denkmalatlas/> (03/08/2022).

<sup>3</sup> Fischer, Susanne, <https://www.blfd.bayern.de/blfd/ansprechpersonen/amtsleitung/index.html#navtop> (access on August 3rd, 2022): Citizens' Portal on Monument Preservation. Contact point and service facility for civic engagement in the preservation of historical monuments, in: Denkmalpflege Informationen Nr. 169, 2018, pp.

Since 2015, two staff members have been taking care of those people who work in archaeology on a voluntary basis, especially the well-organised archaeology associations and private historical researchers, who in very many cases have precise and comprehensive specialist knowledge due to their mostly long-standing work on site. Further training, but also the involvement in controlled excavations have proven to be suitable means to initiate close cooperation with the monument authorities, to convey approaches of modern scientific archaeological conservation and to largely avoid damage through unauthorised excavations. Fortunately, the structures of the leisure archaeologists are so similar throughout the state that the Archaeology and Volunteer Office of our Bavarian State Conservation Office<sup>4</sup> is now spread over two offices in the north and south of Bavaria and can thus show a strong regional presence.<sup>5</sup>

Based on the positive experience in the preservation of archaeological monuments, the Citizens' Portal for the Preservation of Monuments was set up in summer 2018 at the Bavarian State Conservation Office as a counterpart in the preservation of historical monuments, which is now also staffed by two colleagues and takes care of the concerns of private initiatives, foundations, associations and institutions that are involved in the preservation of historical monuments.

Already in the preparatory phase, it became clear that a different approach is required here than in the preservation of archaeological monuments. The ownership structures are different, the economic interests are usually more pronounced, the duration of projects is much longer, and the positive effect of a commitment can be felt much later than in the case of archaeological sites supervision, or even in the case of an archaeological documentation excavation. The interests of the protagonists are also very different, and it is not uncommon for the ideas of owners and committed citizens to differ greatly from one another, making standardised procedures seem impractical. It is not uncommon for initiatives and owners to be hostile to each other, for example when demolition is to be prevented.

What is required, therefore, is a very individual reference to the respective characteristics of the actors and the particularities of the situation. It is also possible that monument activists organised by the public represent a position that clearly differs from the position of the Bavarian Monument Authority. Controversial professional discourse and the mediation of monument preservation concerns make up a large part of the daily work. Listening and mediating is therefore also in demand because it is a matter of sounding out opportunities and possibilities in the mixed situation in order to preserve and care for cultural assets.

Within the Bavarian State Conservation Office, the Citizens' Portal is nowadays again located in the Department of Practical Monument Preservation: Architectural and Artistic Monuments. The

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1013, [https://www.blfd.bayern.de/mam/information\\_und\\_service/publikationen/denkmalpflege\\_informationen\\_169.pdf](https://www.blfd.bayern.de/mam/information_und_service/publikationen/denkmalpflege_informationen_169.pdf) (03/08/2022).

<sup>4</sup> <https://www.blfd.bayern.de/ehrenamt-engagement/bodendenkmalpflege/index.html> (03/08/2022).

<sup>5</sup> Greipl, Egon Johannes ed., [https://de.wikipedia.org/wiki/Egon\\_Johannes\\_Greipl](https://de.wikipedia.org/wiki/Egon_Johannes_Greipl): Archaeology and Volunteer Office. Occasion, function and course of a model project, in: Denkmalpflege Themen 3, 2012, [https://www.blfd.bayern.de/mam/information\\_und\\_service/publikationen/denkmalpflege-themen\\_ehrenamt\\_2012.pdf](https://www.blfd.bayern.de/mam/information_und_service/publikationen/denkmalpflege-themen_ehrenamt_2012.pdf) (03/08/2022).

Citizens' Portal for Monument Preservation<sup>6</sup> sees itself as a cross-organisational institution that is in close contact with the head of the office, the legal department, the inventory department, the restoration workshops, the building archive and training centre in Thierhaupten, the department for the preservation of archaeological monuments and the museum advisory service. In the current development and testing phase, both employees of the Citizens' Portal are also active as area advisors in order to sound out interfaces and opportunities for practical monument preservation, to get to know communication structures more intensively and also to build up an intensive exchange within the authority. Many projects only come about through dialogue between those involved.

A central task of the Citizens' Portal is the continuous exchange and close cooperation with the large civic associations: the Bavarian Regional Association for the Preservation of Local History<sup>7</sup>, the Bavarian Monument Network<sup>8</sup>, the Bavarian Heritage Association<sup>9</sup> and the Bavarian Heritage Foundation<sup>10</sup>. There was also a desire and need for intensified cooperation there; it was not for nothing that Martin Wölmüller<sup>11</sup>, the three years ago sadly deceased managing director of the Bavarian Regional Association for the Preservation of Local History, was one of the initiators of the Citizens' Portal.<sup>12</sup>

The Bavarian Regional Association for the Preservation of Local History, founded in 1902, plays a special role in the preservation of monuments in this, “a little bit special” German State, as this Association is also responsible for the honorary district curators of cultural heritage who, according to the Bavarian Monument Protection Act, are firmly integrated into the consideration processes under monument protection law as a supporting authority not bound by instructions for the preservation of “native cultural properties” together with the lower monument protection authorities of the districts and cities.<sup>13</sup>

The Citizens' Portal offers information, training and exchange, e.g. a “round table” with the heritage managers of a region on the issues of heritage protection and the cooperation between the heritage authority and the lower heritage authority, in order to create a solid basis for the expansion of cooperation and to enable an exchange at eye level. Furthermore, continuous training sessions are organised for the heritage officers who, due to their different professional

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<sup>6</sup> <https://blfd.bayern.de/ehrenamt-engagement/baudenkmalpflege/index.html> (03/08/2022).

<sup>7</sup> <https://www.heimat-bayern.de/> (03/08/2022).

<sup>8</sup> <https://www.denkmalnetzbayern.de/> (03/08/2022).

<sup>9</sup> <https://www.kulturerbebayern.de/verein.html> (03/08/2022).

<sup>10</sup> <https://www.kulturerbebayern.de/verein.html> (03/08/2022).

<sup>11</sup> <https://www.kulturerbebayern.de/blog/artikel/trauer-um-martin-woelmueller.html> (03/08/2022).

<sup>12</sup> Böhm, Johann (<https://www.bayern.landtag.de/abgeordnete/abgeordnete-von-a-z/profil/johann-boehm/>) / Wölmüller, Martin (1956-2019), in: *Schönere Heimat* 2/ 2019, pp. 160162, [https://www.heimat-bayern.de/landesverein/publikationen.html?page\\_n79=2](https://www.heimat-bayern.de/landesverein/publikationen.html?page_n79=2) (03/08/2022).

<sup>13</sup> Spennemann, Jörg (<https://www.merkur.de/lokales/muenchen-lk/unterhaching-ort29619/wird-nicht-die-letzte-pandemie-gewesen-sein-90148393.html>): in Eberl, Wolfgang / Spennemann, Jörg / Schindler-Friedrich, Jörg (<https://www.blfd.bayern.de/blfd/ansprechpersonen/verwaltung/index.html#navtop/>) / Gerstner, Fabian (<https://www.heuking.de/de/anwaelte/profil/fabian-gerstner.html>): Bavarian Law on the Protection of Monuments (Bayerisches Denkmalschutzgesetz). Commentary (<https://www.beck-shop.de/eberl-spennemann-schindler-friedrich-kohlhammer-kommentare-bayerisches-denkmalschutzgesetz/product/28921637>) with a technical introduction by (Bayerisches Denkmalschutzgesetz. Kommentar mit einer fachlichen Einführung von Pfeil Mathias. 8th revised edition. Stuttgart 2020, Art. 13 Margin numbers 2 cont., p. 357 cont.

backgrounds, do not have a uniform level of knowledge regarding heritage conservation and who should also be kept up to date on current developments, formal and legal changes.

We now have an intensive exchange with the Bavarian Monument Network, a Bavaria-wide association of citizens' initiatives, founded in 2012, that are concerned with the preservation of monuments and traditional town and cityscapes in Bavaria. Together, we have introduced a monthly jour fixe to get initiatives that are concerned about concrete buildings and opportunities to keep each other informed and to seek contact for the purpose of professional support. Many of the initiatives only come together because of an acute threat to a building monument and look for solutions for its preservation. Often, it is only through the attention of local citizens that the threat is recognised and made public, so that action can be taken by the authorities.

The example of a citizens' initiative to save the Bavaria Park in Munich shows that in some cases this also requires concrete mediation work: for a long period of time, the group was initially unable to get its concerns heard, which were justified in every respect, for more sensitive care of the historic Bavaria Park in terms of monument preservation – both the practice in dealing with authorities and diplomatic tact were lacking here. It was only through the mediation work of the Citizens' Portal and in patient discussions that the justified concern could be worked out and a neutral discussion platform between the responsible authorities of the city and the committed citizens could be established and moderated. With success, the measures desired by the initiative to maintain the Bavaria Park, which was laid out between 1825 and 1831 by the Royal Bavarian Court Garden Director Karl Ludwig Seitz, then redesigned in 1908 by Ritter (Knight) Gabriel von Seidl<sup>14</sup> and only restored in 2007 in accordance with the preservation order, will be implemented this year. The same applies to the supplementary information boards on the historical park, its significance and its design changes.<sup>15</sup>

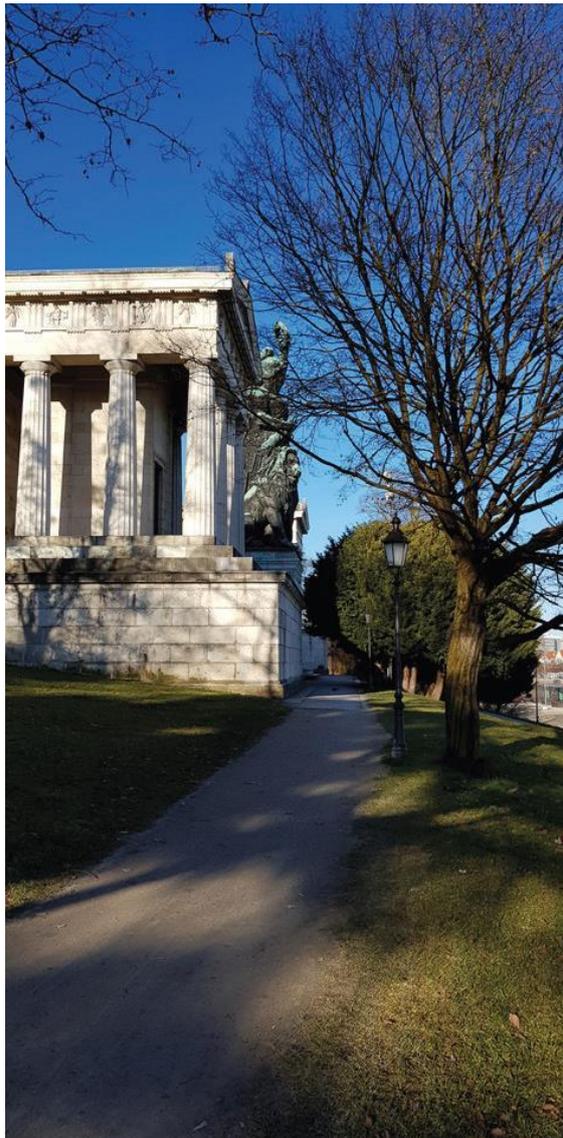
As a young foundation, the Bavarian Heritage Foundation was once again able to receive intensive support from the Citizens' Portal for Monument Preservation during the establishment and constitution phase. The aim of the foundation is to establish a kind of Bavarian counterpart to the "National Trust for Places of Historic Interest or Natural Beauty"<sup>16</sup> in England – a unique opportunity for Bavaria to save special monuments where a common use is difficult for conservation or structural reasons.

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<sup>14</sup> [https://en.wikipedia.org/wiki/Gabriel\\_von\\_Seidl](https://en.wikipedia.org/wiki/Gabriel_von_Seidl) (03/08/2022).

<sup>15</sup> <https://ru.muenchen.de/2019/204/Baureferat-saniert-Wege-im-Bavariapark-87756> (03/08/2022).

<sup>16</sup> <https://www.nationaltrust.org.uk/> (03/08/2022).



**Figure 1.** The Bavariapark in Munich © *Frank Seehausen, BLfD.*

A first building, the late medieval residential house at Judengasse (Jew’s Lane) 10 in Rothenburg ob der Tauber, was taken over by the Foundation and is currently being restored after intensive architectural archaeological research. The sensation, apart from the plank room on the first floor, was the mikveh in the cellar, which was already built before 1410.<sup>17</sup> In the future, it will be used for association purposes and be open to the public. Intensive discussions and jointly initiated preliminary investigations are currently underway for several objects, which are coordinated within the Bavarian State Conservation Office via the Citizens' Portal for Monument Preservation – this means a considerable reduction in workload, especially for the area officers.

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<sup>17</sup> Himpsl, Rudolf, Bavarian State Chancellery ([https://www.xing.com/profile/Rudolf\\_Himpsl/cv](https://www.xing.com/profile/Rudolf_Himpsl/cv)): The residential building Judengasse (Jew’s Lane) 10 in Rothenburg ob der Tauber. Rescue of a Late Medieval Town House by Bavarian Heritage Foundation according to the National Trust Model, in: *Denkmalpflege Informationen* 172, 2020, pp. 28–31, [https://www.blfd.bayern.de/mam/information\\_und\\_service/publikationen/denkmalpflege\\_informationen\\_172.pdf](https://www.blfd.bayern.de/mam/information_und_service/publikationen/denkmalpflege_informationen_172.pdf).



**Figure 2.** The first "protégé" of the Bavarian Heritage Foundation: the house at Judengasse 10 in Rothenburg ob der Tauber, built around 1410 © Willi Pfitzinger, *Kulturerbe Bayern e. V.*

In this respect, the Citizens' Portal on Monument Preservation repeatedly plays a strategic and formative role that can go far beyond what a specialist monument authority usually does. The structural necessity of restoring large-scale Baroque inlaid doors in the former monastery (now castle) of Tegernsee<sup>18</sup>, with its magnificent 17th and 18th century substance, takes on a new character through the use of the Citizens' Portal. The doors are located in a part of the building complex that has been used as a school for decades. An initial survey showed considerable damage due to improper handling, repairs that were not carried out professionally and damage caused by a lack of care in the day-to-day running of the school. Under such conditions, similar damage could be expected again within a short period of time, even after restoration. In order to fundamentally bring about a more careful handling of the valuable substance by the school community, the Citizens' Portal for the Preservation of Historical Monuments initiated a different kind of practical implementation of this measure: over a period of two years, the four doors will now be restored in a "transparent workshop" ("Gläserne Werkstatt") in the school and thus before the eyes of the school public. In cooperation with two teachers, an independent restoration workshop and the official workshops, a mediation concept was developed based on this, which is linked to two consecutive project seminars in the Sixth form and actively involves pupils. Every week, a group of pupils deals with questions of restoration, monument preservation, the historical building of the school and different professions in monument preservation, and learns how to make and care for marquetry using practice materials.

<sup>18</sup> [https://de.wikipedia.org/wiki/Kloster\\_Tegernsee](https://de.wikipedia.org/wiki/Kloster_Tegernsee) (03/08/2022).

The measure is intended above all to sensitise the pupils to the historical monastery and its valuable furnishings, and to be visible to the school public in the long term through comprehensive reporting. The Bavarian State Conservation Office will be involved in this with many departments, not only the official workshops (Figure 3).



**Figure 3.** The group of pupils from Tegernsee grammar school in the training centre of the Bavarian State Conservation Office in Thierhaupten © Frank Seehausen, BLfD.

The visit to the building archive and training centre of the Bavarian State Conservation Office in the former monastery of Thierhaupten<sup>19</sup>, north of Augsburg, was an impressive start, where the workmanship, materials and constructions from different epochs are explained on the basis of the historical doors stored there, as well as suitable methods for examining the historical substance. Of course, visits to the headquarters of the Bavarian State Conservation Office in the state capital Munich<sup>20</sup> and its restoration centres<sup>21, 22</sup>, are also carried out. Such a project can only be carried out by restorers with pedagogical experience who are prepared to work on site over a longer period of time and to respond to questions from the school public. Thanks to generous funding from the Bauer Family Foundation<sup>23</sup>, this was an ideal appointment.

It has been shown that such a bundling of activities and involvement of local actors significantly increases the awareness of the historical substance and the interest in its preservation and mediation among many participants. In the meantime, the activities for the preservation of the substance and the willingness to engage in dialogue have increased in connection with Thierhaupten Monastery, which is now used intensively by four very different owners. There is

<sup>19</sup> <https://blfd.bayern.de/blfd/leitung-organisation/index.html#navtop> (03/08/2022).

<sup>20</sup> <https://blfd.bayern.de/blfd/leitung-organisation/index.html#navtop> (03/08/2022).

<sup>21</sup> <https://www.blfd.bayern.de/blfd/ansprechpersonen/bau-kunstdenkmaeler/restaurierungswerkstaetten/index.html#navtop> (03/08/2022).

<sup>22</sup> <https://www.blfd.bayern.de/blfd/ansprechpersonen/bodendenkmalpflege/restaurierungswerkstaetten/index.html> (03/08/2022).

<sup>23</sup> <https://web2.cylex.de/firma-home/bauer-sche-barockstiftung-9706948.html> (03/08/2022).

hope that further mediation work and moderation will strengthen the awareness that the building should be seen as a whole again in the future. This, however, is then the task of the locally responsible area officer of the Bavarian State Conservation Office and the Lower Monument Protection Authority.

The intensification of dialogue and cooperation with citizens has been taking place in Bavaria for several years with increasing success and is to be further expanded on a broad level – the current activities of the Citizens' Portal are part of these measures. The involvement of local actors within the framework of the "Municipal Monument Concept"<sup>24</sup>, a comprehensive, step-by-step strategic planning procedure designed to raise awareness and mediation, showed more than clearly how important it is for the long-term acceptance of such measures to involve the population and especially its committed forces at an early stage.<sup>25</sup> Only when monument and site conservation are internalised as an essential part of one's own cultural mission can a long-term awareness be ensured. What is currently being carried out on a small scale in the Tegernsee grammar school<sup>26</sup> has been very popular for years in a slightly different form within the framework of municipal planning processes. The Municipal Monument Concept, also a component of Monument Preservation 2020, goes far beyond the "Monument Preservation Survey Sheet", which is used to uncover elements and contexts that characterise the townscape and cultural landscape.<sup>27</sup> It is about the active involvement of users, locally active groups, as well as culturally committed persons and other disseminators in the step-by-step planning and design process that follows the survey of the buildings and elements relevant to the monument and townscape. Monument preservation is to be anchored in the planning processes of the municipalities and the awareness of the population: not as an enemy image, but as a partner. This is also what the Citizens' Portal on Monument Preservation stands for, and the experiences of the first year since its initiation show that this model project, which is unique in Germany, fills a gap.

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<sup>24</sup> [https://www.blfd.bayern.de/abteilungen/denkmalforschung-erfassung/denkmalforschung\\_buergerbeteiligung/index.html#:~:text=Das%20Kommunale%20Denkmalkonzept%20%28KDK%29%20richtet%20sich%20an%20alle,oder%20als%20vertiefender%20Fachbeitrag%20im%20Rahmen%20von%20\(03/08/2022\).](https://www.blfd.bayern.de/abteilungen/denkmalforschung-erfassung/denkmalforschung_buergerbeteiligung/index.html#:~:text=Das%20Kommunale%20Denkmalkonzept%20%28KDK%29%20richtet%20sich%20an%20alle,oder%20als%20vertiefender%20Fachbeitrag%20im%20Rahmen%20von%20(03/08/2022).)

<sup>25</sup> Pfeil, Mathias (ed.), <https://www.blfd.bayern.de/blfd/ansprechpersonen/amtsleitung/index.html#navtop>: Das kommunale Denkmalkonzept. Den historischen Ortskern gemeinsam gestalten und entwickeln, in: Denkmalpflege Themen Nr. 8, 2017.

<sup>26</sup> <http://www.gymnasium-tegernsee.de/> (03/08/2022).

<sup>27</sup> Pfeil, Mathias (ed.), <https://www.blfd.bayern.de/blfd/ansprechpersonen/amtsleitung/index.html#navtop>: Das kommunale Denkmalkonzept. Den historischen Ortskern gemeinsam gestalten und entwickeln, in: Denkmalpflege Themen Nr. 8, 2017, pp. 27–33,

[https://www.blfd.bayern.de/mam/information\\_und\\_service/publikationen/denkmalpflege-themen\\_kommunales-denkmalkonzept\\_2017.pdf](https://www.blfd.bayern.de/mam/information_und_service/publikationen/denkmalpflege-themen_kommunales-denkmalkonzept_2017.pdf).

## THE EFFICACY OF PUBLIC AND PRIVATE PARTNERSHIP (PPP) IN HERITAGE CONSERVATION: TWO EXAMPLES FROM SWEDEN

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### Abstract:

A typical feature of the Cultural Heritage in Sweden are the manorial estates, some grand and well-kept together over time, some less significant today, but preserving important contents. As of the 18th century many such properties were preserved administratively as entailed estates, or *fidei commissi*, meaning that the owner bequeathed the property for eternity to a series of successors - most commonly the oldest son - who would then be bound to keep the property together as a form of foundation which could not be sold or mortgaged, nor willed to someone else. Legislation abolishing this institution was introduced in 1963 but implementation would come only at the demise of the then incumbent holder. There are still a small and obviously dwindling number of *fidei commissi* in existence.

I will describe two cases where - outside of this vanishing system - innovative means have been found to keep the property together and /or restore it. One is some thirty years old and was conceived in a time when the tax system was less understanding than it is today. A rather complicated legal setup achieved what was sought for: the same family in control, but under the influence of and in cooperation with heritage authorities. The second example is more recent. A palatial building had by a series of events been partly ruined and lost most of its surrounding and sustaining land. An innovative entrepreneur found both the financial cornerstone, and the understanding and cooperation of the local community to develop adjoining land and recreate much of what once had been lost.

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### Introduction

The topic is vast. The cultural heritage of Sweden is dominated by private owners and interests. They have to operate under legal rules and financial constraints. The "straight jacket" of legal protective rules often tightens the possibilities to generate income sufficient both to live on and to prevent heritage decay, something that may create tensions between private and public interests. Therefore, partnership between these interests is of great importance. There is not just one solution as to how this partnership can be achieved. I will just - in the vast scope of the topic - give two examples, without any ambition of finding a "role model".

In many countries, tax concession is a tool used to provide incentives for managing and maintaining cultural properties and objects that would otherwise appear too costly for owners and

users. This has never been the Swedish way. There have been, and still are, grants, but for a long time the combined effects of taxes on income, capital gain, wealth, inheritance and gifts were hard to reconcile with the running of heritage entities. However, in the beginning of the 00's, taxation of capital underwent fundamental changes. In broad political unity, inheritance and gift tax were abolished, something that greatly encouraged philanthropy. Next, also wealth tax was scrapped.

This created an economic climate much more friendly to property management, especially landed property which constitutes a great part of the cultural heritage of Sweden.

In the following two examples will be given to illustrate how private interests have interacted with public bodies in order to further preservation. But first an example of an almost perfect concept to further preservation and cohesion of collections. Alas, it is set to vanish.

### **An Outgoing Concept: The *Fidei-Commissi***

Entailed estates, *fidei-commissi*, were set up from the 17th century and onwards, the concept having been imported from continental Europe. Much like a foundation, the founder of a *fidei-commissum* by a deed set aside general rules of inheritance in favour of entrusting the property to just one child – generally the eldest son - but the creator had a freedom of choice; there are examples of youngest daughter. However, the successor did not become the owner. He was entitled to the usufruct, but could not transfer property rights, which were to lie in the *fidei-commissum* itself and continue to future holders.

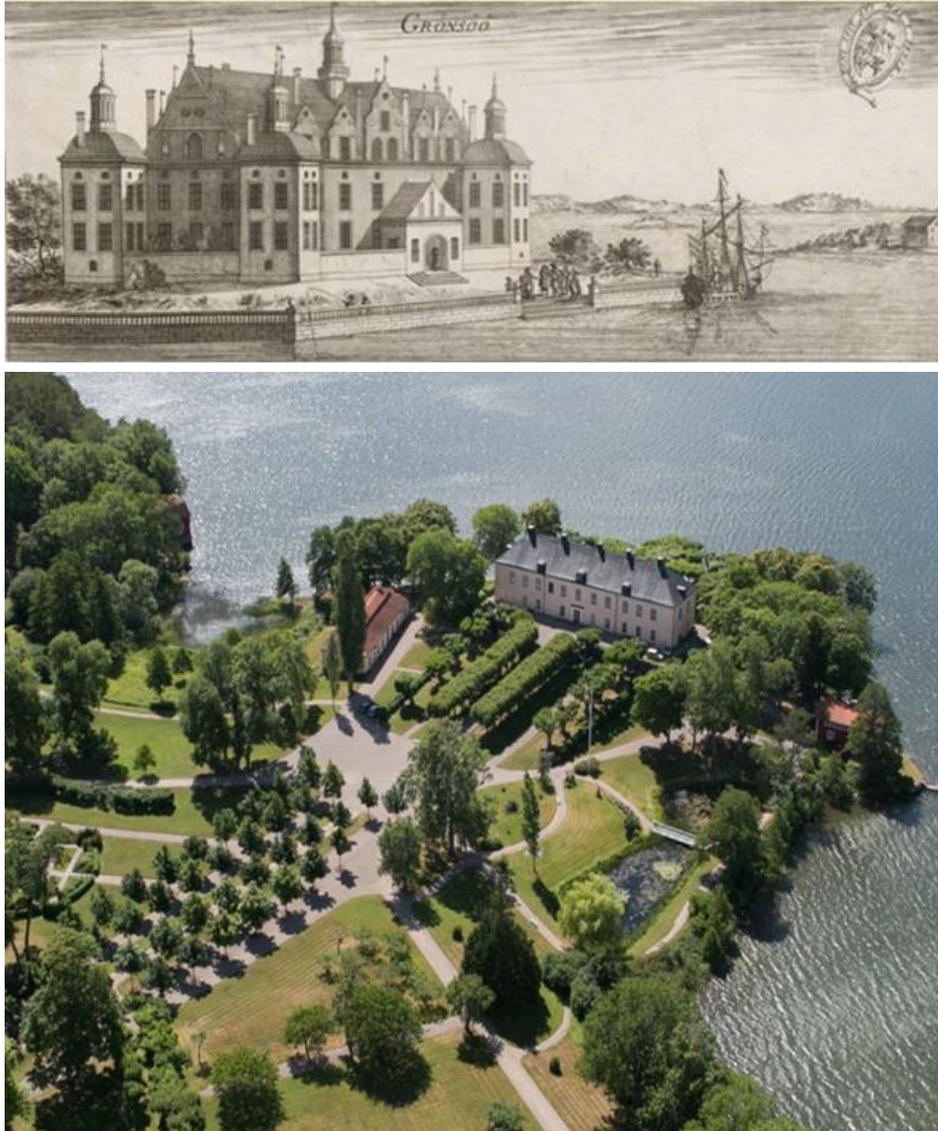
After the French Revolution the concept gradually fell out of favour in Europe. In Sweden, the year 1810 marks the end of creating new landed *fidei-commissi*, but movable property and capital could still be set aside until 1930. *Commissi* already established were not affected until, in 1963, Sweden, as the last European nation, enacted legislation to abolish the institution altogether. Even this procedure would be gradual, and became effective only at the demise of whoever was the holder on 1 January 1964. The rules of dissolution awarded the successor half the property. The remaining half was to be distributed under general rules of inheritance, but there were also special provisions favourable to the remaining spouse.

The fact that many *fidei-commissi* held great cultural values had not gone unnoticed when the legislation was being prepared. In order to mitigate the detrimental effects of dissolution special devices were provided for. One was that under extraordinary circumstances it would be possible for the government to prolong a *fidei-commissum* for one or more generations. The government also became enabled to redeem property to prevent dispersal. Somewhat paradoxically, the first device has been used in rather many cases (at least five), whereas redemption only in one.

The general solution to keep a *fidei-commissum* together in spite of formal dissolution, however, is transformation into special limited companies where shares are distributed under normal rules of inheritance, but with restrictions to the trading of shares and property. This device has been used in at least fourteen cases, and seems to be functioning well.

### The First Example: Grönsö Castle

Apart from the few remaining *fidei-commissi*, foundations managing historic sites in private ownership are rare. The Grönsö Cultural History Foundation is one rather special exemption.



**Figure 1.** Dahlberg © (top) *Suecia Antiqua et Hodierna*, ca 1670, (bottom) by Grönsö Archives

Grönsö is a landed estate approximately 70 kilometres west of Stockholm, consisting of 720 hectares, with a manor house from the beginning of the 17th century surrounded by a park, both listed and protected under the Cultural Monuments' Act. In spite of the fact that it was never a *fidei-commissum*, the same family has resided there well over two centuries, bringing together a rich inventory of furniture, portraits, books and other specimens of art and handicraft and keeping the collection intact in spite of the threat of repeated generational split-up. The collection has been inventoried and documented since the 1920's. House, park and collections are open to the public. In order to ensure that the property stays together for the future, an elaborate juridical construction has been set up.

In the 1980s, it became evident that the property would not be able to generate means sufficient for a long term commitment to the maintenance of the listed buildings and park. Also, the next generation consisted of three children. Dividing the property between them would make the economic situation worse, at the same time as the cohesion of the collections would threaten to dissolve.

To turn the property over to a foundation would solve the problem of keeping it together, but not the economic dilemma. Foundations can be tax exempt under certain conditions, one being that it would have as its main objective to promote scientific research. The family received a negative answer to the query if this could be the case here, the reason being that the family would still be in control and therefore be benefitted unfairly. The family, however, did not want to give up the advantages a foundation could provide in keeping the property from being dispersed.

***The solution found involved the following steps.***

The landed property was transferred to a limited company - the farm company - where the shareholding remains in the hand of the owner family but divided among its members. Transfer of agricultural estates to legal persons demands permission, and the owners were able to persuade the responsible authority that this would benefit the future of the property. The culturally significant inventory, however, was conveyed to another limited company - the museum company - where the shares are controlled by the farm company, and the company articles prohibit de-accessioning of the collections. There are also in both companies' clauses on offer of first refusal in the event shares are to be transferred to someone outside the family.

The foundation holds a majority of the shares in the farm company (but not a majority of the votes) and a minority post in the museum company; the remaining shares held by the farm company. In addition, it is provided with other capital. According to the foundation's articles the dividends shall promote scientific research at an academic level. Primarily, research shall be devoted to the historic and cultural character inherent in the Grönsöö property, i.e. the part that has been protected through listing. In order to promote such research, the foundation is authorised to support cultural heritage maintenance directed to preserving and safeguarding objects for such research. Secondly, other scientific research of national interest with a corresponding aim may be supported.

With this designation, the foundation will be able to enjoy tax benefits, increasing the resources available for the upkeep. The foundation is governed by a board, consisting of three members appointed by public agencies, and two elected by the family. The family's minority position in the foundation board is a prerequisite for the tax relief.

#### Group structure

##### Family

Holds 500 A-shares Farm Company

##### Farm Company

Holds 440 shares Museum Company

##### Foundation

Holds 1500 B-shares (1/10 of a vote) of Farm Company

60 shares Museum Company

Board of Trustees: 3 appointed by public bodies, 2 by family

Museum Company

Held by Farm Company and Foundation

Ban against dispersal

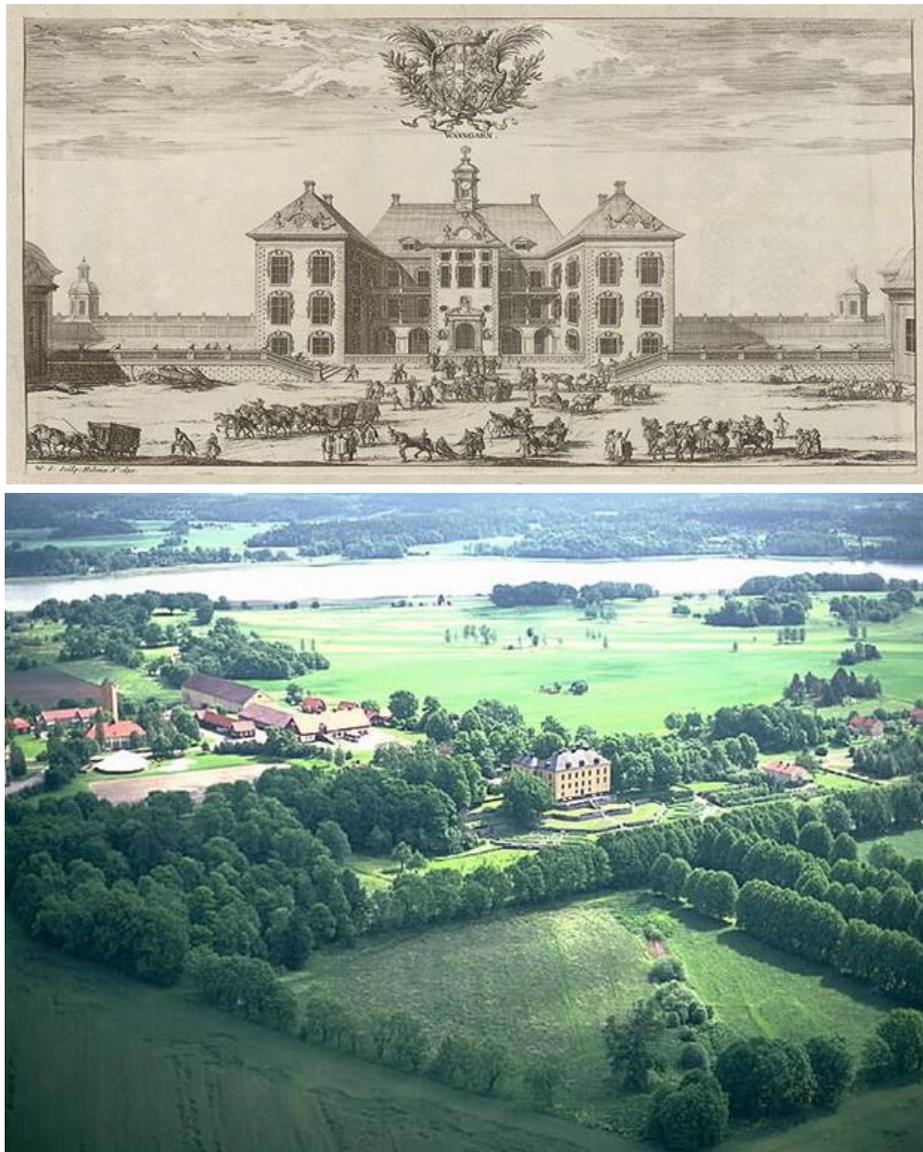
The latest available annual report for the Farm Company (2021) shows a turnover of 5.913 KSEK and a net profit of 58 KSEK. Heritage related costs amount to 1.890 KSEK (divided between buildings, park, accessibility) and were covered by external contributions of 1.339 KSEK. 300 KSEK of the contributions came from the foundation which now has a capital of 9 MSEK,

The annual reports for the Museum Company reveals no activity. Whatever income and costs resulting from maintaining and showing the inventory seems to end up in the Farm Company. The sole aim of the Museum Company appears to be owning the inventory.

### **The Second Example: Venngarn Castle**

The next example concerns a landed estate with a historic record that goes much further back than Grönsöö. Venngarn (in the middle ages spelt Vinagarum) was once one of the largest properties in mid-Sweden. The first evidence of a stone house is from the 1160's. The property changed hands between various feudal families, the last in this series being the Vasa family, from which Gustavus Vasa (King 1523-1560) inherited it and made it his personal property as regent. It was passed on to successive members of the royal family, and then sold to Magnus Gabriel De la Gardie (1622-1686), a most prominent figure in politics and culture. He expanded the property and had the present castle erected on the older foundations. One of the existing elements of this time is the chapel in baroque style.

De la Gardie fell out of favour with ruling monarchs, and the property became confiscated (De la Gardie was allowed still to use it until his death). The property was retained by the Crown, but leased to various users over the years. In 1916 the State erected an institution for the care of alcoholics in separate quarters, and the castle was modified for administrative purposes. In 1935 the castle and gardens became legally protected. The institution and castle were in 1983 sold to a private foundation with a purpose close to the previous one, but were then in 1997 following bankruptcy transferred to a limited company. There followed a period of general decline, no proper maintenance and the premises became a base for various criminal activities, including a brothel. The National Museum decided to remove paintings affixed by De la Gardie, and which had become emblematic of the castle.



**Figure 2.** Venngarn Castle © (top) *Suecia Antiqua et Hodierna*, ca. 1670, (bottom) Jan Norrman/RAÄ

In 2013 the property encompassed only 37 hectares. With a maintenance duty for 70 buildings of 26,000 msq, it clearly lacked economic viability. In this dismal situation it was purchased by a building contractor operating under the brand of the "Sisyfos group", a deliberate symbol for repeated, hopeless undertakings. The contractor, Olle Larsson, saw great potential for the site, being close to Stockholm and its international airport.

After a bad start - four buildings were set on fire, probably by the previous, but now evacuated users - Larsson gathered local interests, including the municipality, in a large scale participatory project. This resulted in a housing development plan for part of the area, the redesignation of the institution building into a hotel, and recreation of the baroque park, to mention the most important of the new projects. The housing project was to become the economic backbone, and very quickly

the municipality adopted a plan, accepted by all parties, and building could start. The hotel was also operational within a year.

The castle itself has - after having been tidied - been left in the same state as by the previous owner. There is no intention to reconstruct it, something which will be difficult given that it is a listed building under protection. It is open to visits, and the chapel is a popular venue for weddings. The work by the Sisyfos group in establishing new activities has been recorded in a series of three booklets. A fourth contains personal recollections of people having lived or worked on the premises under the 20th century up till the point of the take-over by Olle Larsson and his associates.

The Sisyfos group consists of many limited companies with real estate development as its main task. Most of the projects are of a similar type as Venngarn, directed at saving buildings and structures which have fallen out of business viability and are threatened by dereliction. Without naming it so, he operates under the concept of a Revolving Fund, where the idea is to save, sell, and save another. One splendid summer palace from the end of the 19th century placed at the sea entrance to Stockholm was recently successfully sold after a five-year process of renovation.

The intention regarding Venngarn seems to be restructuring the property by dividing it into smaller parts for transfer to new owners and further development, a dialogue is being conducted with the municipality and the neighbours for another 120 new dwellings. The castle seems to be on its way into a foundation. Several questions arise in this context: Will the municipality or other public body take any part in the maintenance-heavy baroque park? How should the foundation be endowed in order to make it a reasonably well going concern? Olle Larsson is looking at the Grönsöo model.

So far Sisyfos seems tireless. Sweden would do well to keep him that way.

### **Sources for the First Example:**

von Ehrenheim, Carl Gustaf, Att bevara en kulturmiljö, 2007

<https://stiftelsemedel.se/grns-kulturhistoriska-stiftelse/>

<https://www.allabolag.se/5563773240/gronsoo-sateri-aktiebolag>

Interview 9 August, 2022 with Jacob von Ehrenheim, CEO Grönsöo säteri AB

### **Sources for the Second Example:**

<https://www.dagensps.se/foretag/kopte-slott-for-125-mkr-hittade-bordell-pa-tomten/>

<https://sisyfos.se/#projekt>

<https://www.allabolag.se/5569420226/wenngarn-fastighetsforadling-ab>

<https://www.allabolag.se/5592768104/wenngarn-anstalten-fastighetsforvaltning-ab>

Interview 10 August, 2022, with Olle Larsson, CEO

## THE CONCEPT OF PUBLIC PRIVATE PARTNERSHIPS IN BELGIUM / THE FLEMISH REGION. EXPLORING THE HORIZON

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### Abstract:

Over the last decades, the phenomenon of public-private partnership (PPP) has significantly gained in importance. Taking the European context as a starting point, this contribution addresses the legal context for PPPs developed in the Flemish Region, and comments some interesting realisations. To conclude some weaknesses and strengths of the formula are highlighted.

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### Introduction: PPP in A European Context

Since World War II, the importance of the public sector in the provision of services and economic activities increased considerably in many European countries.

Public authorities seek for adequate techniques in order to carry out such services and activities in an efficient and affordable way: one of those techniques consists of private public partnership.<sup>1</sup>

With Governments aiming at specific know how of the private sector and confronted with budgetary constraints, the phenomenon of PPPs is expanding rapidly through the Member States of the European Union.<sup>2</sup>

PPPs can be described as forms of cooperation between public authorities and the private sector/economic operators, in general with the aim of realising infrastructure projects or providing services for the public. This type of arrangements is prevalent in several areas of the public sector; in particular in the domains of transport, public buildings or environment.<sup>3</sup> As discussed below, PPPs also found a place in the domain of culture and heritage.

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<sup>1</sup> VILLE, T., "PPS en de impact van het Europees Systeem van rekeningen 1995 ( ESR95)", *Jura Falconis* 2006-2007, 1, 95 .

<sup>2</sup> For an overview dated 2007, see F.BLANC-RUDE, H.GOLDSMITH en T.VALIA, "Public-private Partnerships in Europe: an update", Economic and financial Report 2007/03, European Investment Bank.

<sup>3</sup> Commission interpretative communication on the application of Community law on Public Procurement and Concessions to institutionalised PPP (IPPP), OJ, 12.4.2008, C 91/4.

The importance of the PPP technique for the European Union is underlined by several policy documents.<sup>1</sup> Many of them concern the relation between PPPs in all various forms on the one hand, and the community provisions for public procurement and concessions on the other hand. Whilst this subject is beyond the scope of this article, some documents however offer interesting information on PPPs as such.

In 2004, the European Commission issued a Green Paper on public-private partnerships, taking stock of existing practices in the EU, from a Community perspective.<sup>2</sup>

This document addresses some characteristics of PPPs:

- the relatively long duration of the relationship between the partners, on different aspects of a planned project;
- the method of funding the project, by private and public money;
- the important role of the economic operator at different stages of the project (from design to funding)
- the public partner focusses primarily on defining the objectives in terms of public interest, quality of the services provided, pricing policy and monitoring;
- the distribution of risks between the private and the public partner, not necessarily meaning that the private partner assumes all the risks.<sup>3</sup>
- These characteristics describe the framework and offer a useful checklist for concrete PPP projects, even if specific arrangements are requested for each project. They illustrate the importance of good practices.<sup>4</sup>

The European Commission distinguishes between two types of PPPs: PPPs of a purely contractual nature and PPPs (“IPPPs”) of an institutional nature. IPPPs are usually set up by founding a new company, the capital of which is jointly owned by both partners, or through the participation of a private partner in an existing public law company.<sup>5</sup>

In 2008, EPEC, the European PPP Expertise Centre was created. Embedded in the European Investment Bank, this Centre supports the public sectors across Europe in delivering better PPP-projects. This membership-based network of PPP units and public policy makers shares best practices, based on the experiences of its partners, assists policy development and supports preparation of PPP-projects.<sup>6</sup>

The Council of Europe also stimulates its members to facilitate and encourage PPPs, pleading for the application of the precedents and methodological principles developed in other sectors in the field of heritage preservation and valorisation.<sup>7</sup>

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<sup>1</sup> Ibidem

<sup>2</sup> Green Paper on public-private partnerships and Community law on public contracts and concessions, Com (2004)327.

<sup>3</sup> Green Paper, nr.2.

<sup>4</sup> See further in this text: the experience in the Flemish Region.

<sup>5</sup> Green paper.

<sup>6</sup> See also European Investment Bank, *EPEC Guide to Public-Private Partnership*, 2021, 184 p.

<sup>7</sup> Council of Europe, Parliamentary Assembly, Recommendation 1730 (2005) on the private management of cultural property and the (critical) draft opinion of the CDPAT; Recommendation Committee of Ministers

## PPPs in the Flemish Region: Legal Framework

Following the brief introduction on the general principles and definitions in the European context, this section focusses on the legal framework developed in the Flemish Region through a decree on PPP, into force since 29 September 2003.<sup>8</sup> This decree aims at stimulating and facilitating PPP initiatives to a maximum extend.

Article 2,1<sup>o</sup> of the PPP Decree defines PPP-projects as “projects carried out by public and private law parties jointly and in a partnership in order to create an added value for those parties”.

Chapter II of the PPP Decree used to entrust important responsibilities to a “Flemish PPP Knowledge Centre”, charged with tasks such as “... *Involvement in the preparation and evaluation of policy with regard to all Flemish PPP-projects and the final review and ultimate recommendations regarding all Flemish PPP-projects. This task also encompasses creating awareness and intermediation between each of the public authorities and the private sector*”.<sup>9</sup>

Another responsibility of the Knowledge Centre was the provision of information: “*On request by a local authority or any legal person depending on such an authority, the Flemish Knowledge Centre may provide all relevant information to facilitate PPP-projects being considered or initiated*”.<sup>10</sup>

In September 2020, the Flemish Parliament decided to close down the Knowledge Centre since it was deemed to have fulfilled its mission: it had widely spread information and knowledge on PPP throughout Flanders. In the future, where necessary, support will be granted for the future by a new “Support Entity”, embedded in the Department of Finance and Budget.<sup>11</sup> However, the work of the Knowledge Centre, especially its publications remain valuable.

As mentioned above, the PPP Decree aims at facilitating PPPs, introducing new legal options, specifically for this kind of projects. For example, it derogates from the general rules on the disposal of immovable domain property. The Flemish Government may dispose of these properties, at least when they belong to the private domain. Alienation of and rights in rem on private domain goods are not submitted to restrictions. As far as public domain of the Flemish Region/community is concerned, the creation of rights in rem is also allowed, in so far as they are established in such a way that they are not incompatible with the designated use of the property in question.<sup>12</sup>

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CM/Rec 2017(1). See M.S. DE CLIPPELE, *Protéger le patrimoine culturel: à qui incombe la charge?* Brussels, Université Saint-Louis, 2020, nr. 1758-1774.

<sup>8</sup> Decree 18 July 2003 “betreffende publiek-private samenwerking” B.S. 19 September 2003 as amended later on.

<sup>9</sup> PPP Decree, art. 4,1.

<sup>10</sup> PPP Decree, art. 4,2.

<sup>11</sup> Decree 25 June 2021 “tot wijziging van decreten naar aanleiding van de reorganisatie van het Beleidsdomein Kanselarij en Bestuur en van de samenvoeging van het Beleidsdomein Kanselarij en Bestuur met het beleidsdomein Internationaal Vlaanderen”, B.S. 15 July 2021.

<sup>12</sup> PPP Decree, art.8-10.

Another important achievement of the PPP Decree is that a number of Flemish Agencies can establish or take participations in institutions, associations and undertakings to the extent that these participations do not imply a transfer of competences or a monetary contribution.<sup>13</sup>

In the meantime, some interesting experiences on PPP-projects have been gained in the Flemish Region, giving an insight into the advantages, disadvantages and risks linked to their use. At a regional level, the projects were mainly related to the construction of high ways, schools and sports accommodations. At local level, where the majority of the projects were realised, urban development projects were most prevalent.<sup>14</sup>

### **PPPs in the Flemish Region: Heritage Preservation**

In the context of heritage preservation, all projects where public and private parties collaborate with a view of reaching a common aim, i.e. heritage preservation, can be considered as PPP-projects. Such projects are of increasing interest in the Flemish Region and some positive examples can be found in the past 15 years.

In addition to some individual projects, occurring on a contractual basis, a more structural partnership was developed with some heritage associations.

In the field of individual projects, the restauration and conversion of several mill complexes in cities like Aarschot, Leuven, Bruges etc. and mining sites in the province of Limburg was realised through a collaboration between regional and local authorities, on the one hand, private investors, on the other hand.

PPPs also gained ground in urban development projects, offering possibilities to restore and renovate historic districts.

Looking at several realisations, some initial conclusions can be drawn.

Most buildings or areas concerned were protected as a monument or (as part of) an urban landscape. This implies that for the monuments, and to a lesser extent for the buildings located in an urban landscape, premiums can be earned.

All projects gave rise to supplementary new destinations such as housing, hotels ... and to new constructions. This seems to be an inevitable concession to the private partner, in order to obtain his participation.

At the same time, PPSs offered solutions for the preservation of huge groups of buildings dating back to an industrial past and for historic city centres. Even the protected monuments involved showed signs of neglect since many years, not being in use any longer.

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<sup>13</sup> PPP Decree, art.13.

<sup>14</sup> S. VAN GARSSE, “*De realiteit van PPS. Enkele algemene beschouwingen ten geleide*”, in B.KELCHTERMANS, JEAN-PIERRE SEGERS (eds), *PPS: mythe of realiteit?*, Brugge, Vanden Broele, 2010, 17-18.

From a legal perspective, the projects were based on techniques such as long term lease and rights to build on private and public domain belonging to regional and local authorities.

Recently, the Flemish Tourism Agency acquired several historic monuments bearing witness to the Regions past: Herkenrode Abbey, the castles of Horst and Beauvoorde etc. The Agency aims at restoring these buildings and adapt them for contemporary re-use in the field of cultural tourism.

For many of these buildings a collaboration was established with Herita, a private non-profit organisation aiming at creating public support for heritage, stimulating and encouraging local and provincial heritage associations. In addition, the management of important monuments and heritage sites, owned by public authorities, is an important aim.<sup>15</sup>

At this moment, Herita is involved in the management of 11 protected monuments: a chapel, several castles, a fortification, an abbey, a mill etc.

The association is receiving annual subsidies from the Flemish Government for its functioning and premiums for the restoration of the buildings entrusted to its care. At the same time, it established a membership system to finance the management of the heritage sites, which are open for the public.

Herita is a member of INTO (International National Trust Organisation).<sup>16</sup>

The five Flemish provinces lend considerable support to Monument Watch, an independent non-profit association aiming at preventive conservation. Teams of specialists carry out inspections of movable and immovable heritage and formulate recommendations about works to be carried out in the near and distant future. Owners of protected or non-protected, but valuable heritage can become a member of this association on a voluntary basis. Inspections are carried out for a very reasonable price.

Monument Watch currently counts more than 3,200 members.<sup>17</sup>

### **PPPs: Opportunities and Caveats**

*“Recourse to PPPs cannot be presented as a miracle solution for a public sector facing budget constraints. Experience shows that, for each project, it is necessary to assess whether the partnership option offers real value added compared with other options”.*<sup>18</sup>

This citation illustrates the fact that the use of the PPPs is not always appropriated. To conclude, this part of the contribution is devoted to opportunities and risks associated with the use of PPPs

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<sup>15</sup> Statutes Herita as amended 29 June 2020, art.2.

<sup>16</sup> For more information, see [www.herita.be](http://www.herita.be). An English version of the site is under construction.

<sup>17</sup> For more information, see [www.monumentenwacht.be](http://www.monumentenwacht.be)

<sup>18</sup> Green Paper

of a contractual nature in the domain of heritage preservation. The experiences in the Flemish Region serve as starting point.

First of all, one should keep in mind that the interests of the parties involved in PPPs are different: the public sector defends public interests, the private sector is forced to think in (short term) profitability. This can present dangers for valuable heritage, in need of precious care.<sup>19</sup> In case of urban developments in an historic context, newly constructed buildings, which are inevitably part of the deal with a private developer, can considerably affect the character of a district.

Nevertheless, the use of PPP-formulas already led to the rescue of several monuments. Let us take the example of the ‘s Hertogenmolens in Aarschot, a smaller town with 30.000 inhabitants. Since 1910, the Belgian State owned this huge mill complex which later on, in the nineties, was transferred to the Flemish region and subsequently to the city of Aarschot (2004).

The origins of the mills go back to the early 16th century. The mills survived several armed conflicts and remained in use until 1960. Once abandoned, they rapidly decayed. Since 1980 several attempts to restore the mills by the respective public owners failed: as a result of lack of financial means, lack of an appropriate new destination etc.

A PPP-project finally led to an appropriate solution: the city of Aarschot collaborated with regional public authorities and with a private developer. In collaboration with a specialized architect, the developer made a restoration proposal, and calculated the amount of investments required.

By means of compensation, the private party obtained the right to open a hotel and restaurant in the mills for a period of 99 years, and to construct apartments on public domain belonging to the city of Aarschot.

The restoration was realised in the period between 2007-2010; the total budget amounted to EUR 17,2 million, of which 44% was invested by the private developer.<sup>20</sup>

In 2014, the Flemish PPP Knowledge Centre questioned 100 persons involved in PPP-projects in their capacity of politician, civil servant, architect, economist, philosopher, representative of a non-profit organisation etc.<sup>21</sup> The questionnaire dealt among other aspects of PPP, with best practices and lessons learned for future projects.

A first and important element that came out is that PPP-projects must lead to a win-win situation for both parties. For public authorities added value can consist of better quality for the same budget or to comparable quality for a lower budget. Private parties aim at economic benefits. Both

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<sup>19</sup> M.S. DE CLIPPELE, « *Protéger le patrimoine culturel: à qui incombe la charge?* », Brussels, Université Saint-Louis, 2020, nr. 1759.

<sup>20</sup> Knowledge Centre PPP.

<sup>21</sup> PMV, Team Vlaamse Bouwmeester, Kenniscentrum PPS, *100 Stemmen over PPS*, Brussel, 2014, 100p.+XXV.

parties together realise an important benefit for society: they contribute to heritage preservation by saving monuments and revitalising historic districts.

Many experts stressed the need for a meticulous preparation of the project, based on expectations and choices of the public partner and the willingness of the private partner to accept them. Aims must be clear, risks for both parties must be assessed, a fair balance must be struck.

Each PPP-project has own aims and characteristics which are to be reflected in a well drafted contract, in which the rights and obligations of both parties in the PPP-project are described in detail. A case by case approach is inevitable.

If necessary experts must be involved in the preparation of the project, the drafting of the contract and the follow-up of the preservation works once started.

### **Conclusion**

To conclude, public private partnerships are an instrument but not an aim for heritage preservation. Competent authorities should decide on a case- by- case basis whether the use of this instrument is appropriate, comparing the PPP option against other available project strategies.

Positive examples in the Flemish Region lead to the conclusion that PPP can add value in the field of heritage preservation.

## SCOPES AND PURPOSE OF PUBLIC-PRIVATE PARTNERSHIPS FOR HISTORICAL AND ARCHAEOLOGICAL SITES IN THE PHILIPPINES

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### Abstract:

In the Philippines, various laws mandate the management and protection of historical, cultural and archaeological sites. Under national laws that mandate Public-Private Partnerships (PPP), there have been proposals for projects that aim to preserve, restore and implement adaptive reuse measures for historical sites in Manila, the Philippines' capital city. On the other hand, collaborations between government cultural agencies and private institutions have also been in place to manage archaeological sites and conserve archaeological materials. This paper examines legal instruments that mandate PPPs and analyses how its structure is not specialized for the procurement of services for heritage conservation. Nonetheless, current laws and practice may accommodate projects for heritage conservation, albeit as the procurement of scientific and/or scholarly works and the procurement of highly technical consultants. The discussion includes a case study on a proposed PPP for the conservation of the Manila Post Office, a historical site in the City of Manila and other cases applying laws on PPPs in the Philippines.

### Introduction

Public-private partnerships (PPPs) are contractual arrangements where the private sector assists in delivering a service by providing funding or leadership.<sup>1</sup> The European Commission defines PPPs as a form of cooperation between public authorities and the private sector to modernize the delivery of infrastructure and strategic public services.<sup>2</sup> In the European Union, individual countries have a statutory obligation to provide for public utility services, which include heritage protection and restoration. These services within such sectors can be delegated to private entities through PPPs.<sup>3</sup> PPP contracts in Europe are either mid-term (10-30 years) or long term (more than

<sup>1</sup> Macdonald, Susan and Cheong, Caroline (2014). *The Role of Public-Private Partnerships and the Third Sector in Conserving Heritage Buildings, Sites and Historic Urban Areas*. Los Angeles: The Getty Conservation Institute.

<sup>2</sup> The European Commission (2009), *Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships*, Brussels.

<sup>3</sup> European Union European Regional Development Fund (2017) *Handbook on Public Private Partnership (PPP) in Built Heritage Revitalisation Projects*.

30 years).<sup>1</sup> PPPs in Europe also involve the preservation of built cultural heritage through collaborations with various stakeholders for the management and preservation of historical and archaeological sites.<sup>2</sup>

In the Philippines, under the Philippine Constitution, the state recognizes the value of both Philippine culture<sup>3</sup> and history, and the indispensable role of the private sector in enterprise and investments. Thus, legal and regulatory frameworks for PPPs, and the protection of cultural heritage have been enacted. A cursory perusal of both the legal and regulatory frameworks for both PPPs and cultural heritage protections indicate the existence of legislative gaps to enable an environment that encourage PPPs in the cultural heritage sector. For example, the National Cultural Heritage Law (NCHL) expressly states that the National Museum is responsible for significant movable and immovable cultural and natural property pertaining to the collection of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy, including the conservation aspect.<sup>4</sup> On the other hand, the laws that govern PPPs were specifically designed to encourage commerce, investment and the advancement of infrastructure. The case study on a proposed PPP between the private sector and the public sector to conserve the National Post Office of the Philippines shows that both the NCHL and the PPP create independent frameworks that do not create an enabling environment to foster PPPs in the cultural heritage sector. Thus, to date, while there were existing proposals for PPPs for the preservation and conservation of heritage structures, none pushed through due to the framework of the PPP, which is designed primarily to encourage PPPs between government and private businesses to encourage investment and infrastructure projects.

### **The Legal and Regulatory Framework for Cultural Heritage in the Philippines**

In the Philippines, the primary legal framework that governs the management of cultural heritage sites is the National Cultural Heritage Law of 2009 (Republic Act No. 10066) (NCHL). Promulgated, in 2010, the NCHL aims to protect, preserve, conserve and promote the nation’s cultural heritage, including its property and histories.<sup>5</sup> The NHCL provides a system of classifying cultural properties in National Cultural Treasures and Important Cultural Properties, among others.<sup>6</sup> Cultural Property refers to all products of human creativity through which a people and a nation reveal their identity, including churches, mosques, schools, and other movable, immovable, tangible and intangible properties, whether public or privately owned.<sup>7</sup>

Under the NCHL, “Heritage Agreements” in the form of contracts may be entered into by the NCCA, with private owners of cultural property as regards their preservation. Heritage Agreements may include the maintenance and management of the property, public access to the

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<sup>1</sup> See page 12, at Note iii.

<sup>2</sup> See pages 37-39 at Note iii.

<sup>3</sup> Sections 14, 15, 16 and 17, Article XIV, 1987 Constitution of the Philippines

<sup>4</sup> Section 31(3), Article VIII, Republic Act No. 10066, “National Cultural Heritage Act of 2009”.

<sup>5</sup> See Section 2. (a), Article I at Note vii.

<sup>6</sup> Sec. 4, Article III at Note vii.

<sup>7</sup> See Section 3(o), Article II at Note vii.

cultural property, and the restriction of certain of the performance of certain acts near the place where the cultural property is located, among others.<sup>8</sup>

### ***Government Cultural Agencies***

The legal framework for the protection and management of cultural heritage is designed such that government agencies are the primary managers of cultural properties. Under the NCHL, various cultural agencies that are individually mandated to protect certain types of cultural heritage. For built heritage such as monuments and sites, there are three (3) government cultural agencies that work at the forefront of heritage conservation: The National Commission for Culture and the Arts (NCCA); the National Museum of the Philippines (NMP) and the National Historical Commission of the Philippines (NHCP).

The National Commission for Culture and the Arts (NCCA) is mandated to regulate activities inimical to the preservation and conservation of national cultural heritage.<sup>9</sup> While the NCCA is also called upon to coordinate with governmental, non-governmental and cultural institutions and agencies for assistance in any form, in practice, partnerships with private institutions have been on a project basis, and have not been implemented as a PPP under the PPP Law.<sup>10</sup> The NCCA is also mandated to coordinate with other national cultural agencies such as the National Museum of the Philippines (NMP), among others,<sup>11</sup> and with local, provincial or regional government units to promote, develop and implement its programs.<sup>12</sup> Furthermore, the NCHL also provides that the NCCA, upon the advice of the concerned cultural agency, may enter into agreements for the preservation of privately owned cultural properties, with private owners of such cultural properties.<sup>13</sup>

The NMP, a government institution also created by law, is the permanent government institution that protects, preserves, and promoting national patrimony for the benefit of current and future generations,<sup>14</sup> including government historical buildings, shrines, landmarks, monuments and sites that have been designated as National Cultural Treasures<sup>15</sup>. As a scientific institution, it takes the lead in the study and preservation of the country’s cultural heritage.<sup>16</sup> Under the NCHL, the National Museum of the Philippines (NMP) is responsible for significant movable and immovable cultural and natural property, including the conservation aspect of collections of archaeology and anthropology.<sup>17</sup> In 2019, a new law provided for the reorganization of the NMP. As a result, the

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<sup>8</sup> See Section 18, at Note vii.

<sup>9</sup> Section 13 (I), Republic Act No. 7356, An Act Creating the National Commission for Culture and the Arts, establishing national endowment fund for culture and the arts, and for other purposes.

<sup>10</sup> See Section 13 at Note xii.

<sup>11</sup> Section 18, at Note xii.

<sup>12</sup> See Section 16, at Note xii.

<sup>13</sup> See Section 18, at Note vii.

<sup>14</sup> Section 4, Republic Act No. 11333., An Act Establishing a National Museum System for its Permanent Home and for other purposes.

<sup>15</sup> Section 13, Republic Act No. 4846 as amended by Presidential Decree No. 372. Cultural Properties Preservation and Protection Act.

<sup>16</sup> See Section 4(a), at Note xvii

<sup>17</sup> See Section 31 (e), Article VIII, at Note vii.

regulatory functions such as the issuing of permits for archaeological research and excavation, as granted by previous laws, were transferred to the NCCA.<sup>18</sup>

On the other hand, the National Historical Commission of the Philippines (NHCP) is the primary government agency responsible for history and has the authority to determine all factual matters relating to official Philippine history.<sup>19</sup> It is mandated to undertake and prescribe the manner of restoration, conservation and protection of the country’s historical movable and immovable objects.<sup>20</sup> The Board that governs the NHCP is authorized to initiate and promote programs for the popularization of Philippine history in cooperation with the appropriate government or private entities<sup>21</sup>, and to regulate activities pertaining to the preservation, restoration and conservation of historical property or resources.<sup>22</sup> Under the NCHL, the NHCP and the NMP are responsible for intervention works and measures on conservation of National Cultural Treasures, Important Cultural Property, national historical landmarks, sites and other historical or cultural structures.<sup>23</sup> The NHCP alone is responsible for significant movable and immovable cultural property that pertains to Philippine history, heroes and the conservation of historical artefacts.<sup>24</sup>

Philippine national heritage laws mandate that the management of the country’s cultural heritage, which includes the conservation of built heritage such as monuments and sites, will be under the direct supervision of the NCCA, the NMP and the NHCP, which are three (3) agencies of the government. Because of the public interest attached to build cultural heritage, the laws are framed to allocate the power to manage cultural resources to the appropriate government agency. Thus, while the law also provides that the NCCA, the NMP and the NHCP may coordinate with appropriate private (non-government) organizations to further their programs, the NCCA, the NMP and the NHCP still have the primary prerogative to manage and oversee heritage conservation efforts in the country.

For PPPs under the law, however, the legal framework for PPPs does not provide an enabling environment to forge public-private partnerships for heritage conservation, but instead provides a procedure for the procurement of private goods and services for businesses in the trade, industry and infrastructure development sectors.

### **The Legal and Regulatory Framework for PPPs in the Philippines**

Two laws govern the regulatory framework of PPPs in the Philippines: (1) The law authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector (Infrastructure Projects Law);<sup>25</sup> and (2) the Government Procurement Reform Law (Procurement Law), as amended.<sup>26</sup>

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<sup>18</sup> Section 30, Republic Act No. 11333, “National Museum of the Philippines Act”.

<sup>19</sup> Section 5, Republic Act No. 10086, “Strengthening People’s Nationalism through Philippine History Act.

<sup>20</sup> See Section 5(c), at Note xxii.

<sup>21</sup> See Section 7(g), at Note xxii.

<sup>22</sup> See Section 7(l), at Note xxii.

<sup>23</sup> See Section 15, at Note vii.

<sup>24</sup> See Section 31(d), Article VIII, at Note vii.

<sup>25</sup> Republic Act No. 6957 as amended by Republic Act No. 7718.

<sup>26</sup> Republic Act No. 9184.

The Infrastructure Projects Law provides the rules and regulations for PPPs with private construction firms or contractors in infrastructure and development projects. It includes financing and the procedure for the public bidding of projects.<sup>27</sup> There are no provisions that cater to the protection and conservation of historical and/or cultural structures and materials.

The Procurement Law, on the other hand, provides for the standardized procedure for acquiring goods and services for in infrastructure projects from the private sector.<sup>28</sup> Its Implementing Rules and Regulations (IRR) provides the requirement for Negotiated Procurement, which includes the procurements of scientific, scholarly or artistic works,<sup>29</sup> and highly technical consultants.<sup>30</sup> Negotiated Procurement is a method of procuring consulting services, among others, whereby the procuring entity (a government agency, in this case), directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.<sup>31</sup>

While neither the Procurement Law or its IRR identify heritage conservationists, archaeologists and other professions related to heritage conservation, the highly specialized nature of this practice can fall under highly technical consultants, and any background research related to the matter may fall under the procurement of scientific and/or scholarly works.

The procurement of scientific and/or scholarly works entails the justification of the procurement of such study, which, under the IRR is described as a “market study”. While data on previously procured scientific and/or scholarly works related to heritage conservation is unavailable, scientific and/or scholarly works related to heritage conservation is crucial for projects on heritage conservation.<sup>32</sup>

On the other hand, the highly technical knowledge for the practice of heritage conservation, archaeology, and other professions for heritage conservation can consider them as Highly Technical Consultants under the Procurement Law. The term of procurement for highly technical consultants is at most six (6) months.<sup>33</sup>

All highly technical consultants and those who are to undertake scientific and/or scholarly work must register with the Philippine Government Electronic Procurement System (PhilGEPS), an electronic system established to facilitate the registration of contractors and the procurement process.<sup>34</sup> Among requirements under the PhilGEPS system are: For scientific/scholarly studies, (a) a Mayor’s/Business Permit under the Department of Trade and Industry (DTI, professional license or curriculum vitae (CV), and tax returns for projects with a budget above 500,000 Philippine Pesos; for highly technical consultants, a professional license or CV.<sup>35</sup>

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<sup>27</sup> Sections 2, 3 and 4 of Republic Act No. 6957

<sup>28</sup> Section 5(n), Republic Act No. 9184.

<sup>29</sup> Section 53.6, Implementing Rules and Regulations of Republic Act No. 9184.

<sup>30</sup> See Section 53.7, at Note xxxii.

<sup>31</sup> See Section V. D. at Note xxxii.

<sup>32</sup> See Section D.6, at Note xxxii.

<sup>33</sup> See Section D.7, at Note xxxii.

<sup>34</sup> See Section 8, at Note xxxii.

<sup>35</sup> See Annex “H”, at Note xxxii.

Noticeably, under both laws, there are no specific provisions on the rules and regulations governing the conservation of cultural heritage, or any related topics. Noticeably, even under the National Museum Law, PPPs are encouraged for infrastructure projects and the development of the physical plan of the National Museum Complex in Manila, the capital of the Philippines.<sup>36</sup>

## **Case Studies**

### ***1. Manila Urban Heritage Urban Renewal Project***

In 2014, during the term of President Benigno C. Aquino Jr., the Manila Heritage Urban Renewal Project (the “Project”) was conceptualized. Under the Project, a private partner was to be hired to preserve heritage buildings and landmarks through adaptive reuse, and in the process revitalize important historical district/s and create vibrant tourist zones in Manila.

The Project involved re-developing the following historical structures in the Philippines:

a. **Manila Central Post Office (MCPO)**

The MCPO is a neoclassical building designed by Architect Juan M. Arellano. It was originally constructed in 1926 and rebuilt according to its original design in 1946 after its destruction during World War II. It is designated as a National Historical Landmark by the NHCP.

b. **Liwasang Bonifacio**

The Liwasang Bonifacio is a 13,201 sq.m. triangular shaped park named after Andres Bonifacio – leader of the Philippine revolutionary forces against the Spanish colonial government. It is situated in front of the MCPO building with a grand fountain on the upper extreme of the area while the monument of Andres Bonifacio stands at the center of the park. The park has been declared as a National Historical Landmark by the NHCP.

c. **Manila Metropolitan Theater**

The Theater, also designed by Juan M. Arellano, is an art deco building with a total seating capacity of 1670 persons. The theater, like other American-era structures in the city, was severely damaged during the bombing of Manila. Sculptures and stone carvings were done by Italian sculptor Francesco Riccardo Monti and artist Isabelo Tampingco.

d. **Bureau of Customs (BOC) Building and the South Harbor Expanded Port Zone (SHEPZ)**

The BOC Building is a neoclassical building designed by architect Antonio Toledo and built in 1939. It was part of the ensemble of grand government buildings built according to the 1905 plan of Daniel Burnham who envisioned the area as the seat of the country’s center of political power. The BOC Building is located within the SHEPZ, a 10-hectare parcel of land fronting A. Bonifacio Drive.

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<sup>36</sup> See Section 9, at Note xvii

The Privatization and Management Office (PMO), an agency under the Department of Finance with the power to take title to and possession of, conserve, and provisionally manage certain government assets identified for privatization, including assets where private sector participation is contemplated, took the lead in the implementation of the Project. It coordinated with the various government agencies which owned the properties, the national cultural agencies which had regulatory power over them, and the City of Manila, the local government unit with zoning power over the area. The plan was to do an integrated development of all the sites.

While approvals from all the parties who owned and/or regulated the properties were being processed, the Project was referred to the PPP Center, the government agency responsible for implementing PPP programs and projects. The PPP Center, with the conformity of the PMO, would hire a private consultant to do the following:

- (a) Determine the viability or non-viability of the Project;
- (b) Determine the most appropriate implementation strategy with the following modes of implementation as options:
  - (i) Government owned and implemented through applicable modes of financing (e.g., Official Development Assistance, government funds),
  - (ii) PPP under Republic Act (R.A.) 6957, as amended by R.A. 7718 or the Build-Operate-Transfer (BOT) Law or,
  - (iii) Combination of (i) and (ii).
- (c) Ensure effective bid process through financial close should the Project be viable for PPP implementation.

Preparations for the hiring of a consultant by the PPP Center for the Project was ongoing when there was a change of administration. In 2016, then newly-elected President Rodrigo R. Duterte declared that the MCPO should be used as an office for a new government department on overseas Filipino workers. Because of the change in administration, government officials were replaced. The Project was set aside and forgotten.

## ***2. Programs for Cultural Research***

In 2020, a Government Owned and Controlled Corporation (GOCC) specializing in cultural research released a call for proposals for scholarly research on cultural heritage. Based on the authors' personal knowledge and experience, the applicants, who were researchers, students, professionals and other individuals with specialized knowledge on topics related to heritage management, who had not registered with the PhilGEPS system prior to the announcement of the project were discouraged from continuing the procurement process for scholarly works due to the business permit requirement under the Procurement Law. The procurement of scientific or scholarly works entails the registration of the researcher(s) or author(s) of the work to register as a sole proprietor or professional under the DTI Registration procedure. Despite not operating under a business, to procure their services to undertake scholarly works, the Procurement Law required that they consider themselves as sole proprietors in accordance with the trade and industry in the country. Later on, the research project was discontinued due to the lack of interested applicants due to the difficulty in securing the said registration requirements. In this

case, it was not the difficulty to undertake research that hindered the project’s continuance, but the difficulty in obtaining the requirements for registering under the PhilGEPS system.

Both case studies show that previously planned PPPs for heritage conservation in the Philippines did not push through because the current PPP system is not tailor-fit for the heritage sector. In the Manila Urban Heritage Urban Renewal Project, the change of administration hindered the PPP’s implementation. In programs for cultural research, the procurement of scientific scholarly work did not materialize because individual researchers were not able to fulfil the tedious business permit requirement, which researchers do not usually acquire in ordinary day-to-day practice.

### **Discussion and Conclusion**

An analysis of the legal framework for the protection and conservation of Philippine cultural heritage reveals that the State, through various government cultural agencies, is the primary authority for the management and preservation of historical and archaeological sites. The various cultural agencies, such as the NCCA, the NMP and the NHCP are presumed to be equipped with the expertise in managing, conserving and preserving Philippine cultural heritage in general, including historical and archaeological in particular.

While the NCHL provides for Heritage Agreements with private owners of cultural property for the preservation of the same, it is not within the framework of PPPs in that PPPs are designed to be long-term agreements with the government and private entities for the development of infrastructure projects and other business-related projects. Heritage Agreements under the UCHL merely provide agreements for private owners of cultural property to grant public access to the property and to collaborate with the NMP and other cultural agencies for its preservation. This is consistent with the legal framework for cultural heritage preservation such that government cultural agencies such as the NCCA, the NMP and the NHCP are empowered to preserve cultural properties under their jurisdiction.

Furthermore, the legal framework that governs PPPs in the Philippines reveals that the law was crafted to encourage PPPs in the trade and industry, and infrastructure sectors. While cultural agencies such as the NMP, the NCCA and the NHCP are the main government agencies that cater to the management, conservation and preservation of cultural and archaeological sites, PPP laws in the country do not provide for the specific procurement of private services for heritage conservation.

With the highly technical nature of heritage conservation, individual and professional practice and the structure non-government organizations (NGOs) specializing in this expertise are not parallel to the structure of businesses and industry-related organizations. Instead, the PPP laws provide a mechanism for experts in heritage conservation to write scholarly works or be highly technical consultants through the Procurement Law. However, the duration of consultancy contracts does not exceed six (6) months. As demonstrated by the case studies, existing PPP laws in the country discourage more than encourage PPPs for heritage conservation due to the specialized business-related requirements under PPP laws.

The implementation of PPPs in the Philippines differs greatly from the EU’s PPP framework in that current PPP practices in the EU are not geared solely towards business and infrastructure. Legal mechanisms in the EU specifically provide for PPPs in the conservation and management of historical and archaeological sites, while in the Philippines, the Procurement Law was designed primarily to procure goods and services for industry interests.

To date, all attempts to forge PPPs for the heritage conservation of historic buildings have not been successful. To provide for more conducive legal mechanisms to accommodate heritage protection specifically, the amendment of existing laws to include a definite procedure of procuring services of experts from the heritage conservation sector or the enactment of specific laws for this purpose are crucial in enabling such an environment.

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## THE DEVELOPMENT OF URBAN AREAS BY COMPETITION: CASES IN HELSINKI

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### Abstract:

The development of urban areas today is often a combination of democratic planning and collaboration with private parties. In Finland, detailed land use planning is the responsibility of each municipality. In Helsinki City, there are several central urban milieus in need of new strategies. The City Government has recently been promoting the development of areas like the South Harbour, the Central Railway Station Squares and the Lapinlahti Hospital Area by means of design competitions. The competitions have inspired a lively debate on the role of private parties in the development of iconic urban milieus. In my paper, I will discuss the relations of the public and private parties in urban design in the light of the Finnish legislation and the mentioned cases.

### Introduction: The Legislative Framework for Competitions in Urban Planning

In Finland, the Land Use and Building Act (132/1999) is the central piece of legislation, which lays down the premises for the planning of urban as well as non-urban areas. According to the Act, a local detailed plan shall be drawn up so that it among other things creates the preconditions for a healthy, safe and pleasant living environment, locally available services and the organization of traffic. The built and the natural environment shall be preserved and their special values shall not be destroyed. There shall be sufficient parks or other areas suitable for local recreation in the area covered by the plan or in its vicinity.<sup>1</sup>

Detailed planning, including the use of a specified area, the building volume and other preconditions for building on that area, is in the powers of the municipality. The municipality can however enter into agreement with a private landowner concerning planning and the implementation of plans. Such an agreement may concern for instance the initiation of planning and the liability for costs or other mutual rights and obligations of the parties, but it can never set binding terms for the content of the plan. The municipality alone is obliged to take care that the plan fulfils all the criteria provided by the Land Use and Building Act and is, altogether, according to law. Hence, the municipality determines the content of the plan in the end. Land use agreements are public documents, just like planning documents.

<sup>1</sup> The Land Use and Building Act is under reform. Find more information at <https://ym.fi/en/land-use-and-building-act> (5 August 2022)

The municipality may also organize a design competition such as architectural competition, “ideas competition” or “concept competition” as a pre-planning phase to collect ideas for the development of a certain area. Competitions have a long tradition in the context of land use and architecture, but there is no specific legislation concerning them.

Instead, there are general provisions on design competitions in the Act on Public Procurement and Concession Contracts (1397/2016). According to the Act, design competition is a procedure enabling the contracting entity to acquire a plan or design selected by a jury with or without the award of prizes. The jury members shall be natural persons who are independent of the competition participants. The number of participants may be limited by applying criteria announced in advance. Where a particular professional qualification is required of the participants, at least one third of the jury members shall have the same or an equivalent qualification. The jury shall be autonomous in their decisions or opinions. Proposals of the participants shall be evaluated anonymously, and solely on the criteria set out in the notice concerning the competition. Anonymity must be observed until the jury have issued their final opinion or decision. If the contracting entity may conclude a service procurement agreement with the winner or winners of the competition, information on this must be included in advance in the notice concerning the competition.

A design competition thus enables but does not compel the municipality to conclude an agreement with the winner without further call for tenders. The agreement should however not be larger than the original subject of competition was. In case the competition is about the redesign or development of an urban area, the municipality may use the winner design when preparing a new local detailed plan. Where the municipality organized the competition to find new use for a public area or public buildings, the process usually involves a land use agreement with the winner and probably building permission and sale of the existing buildings to the same.

The municipality may also grant a private party a reservation, i.e. an exclusive right, for planning as a kind of preliminary phase before the actual land use agreement. At the same time, the municipality may set down conditions for the planning. Such a reservation procedure is not regulated in the Land Use and Building Act and it is therefore based mainly on customary law.

The City of Helsinki has recently arranged design competitions over the development of some central public places. The competitions and the design proposals received have led to a lively debate. In the following, I am going to discuss some main points presented by three different cases.

### **Case South Harbour**

Helsinki South Harbour<sup>1</sup> where many cruise ships visit is located in the heart of the city within a short walking distance from the Market Square and the so-called Empire centre. It is said to be a

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<sup>1</sup> See panorama picture at <https://www.uuttahelsinki.fi/en/city-centre> (5 August 2022)

unique part of the maritime facade of Helsinki. The South Harbour is partly included in and surrounded by nationally important built heritage. A nationally important maritime landscape extends to the South Harbour Bay. In addition, the area is located within the buffer zone of the Suomenlinna Fortress World Heritage Site.

Being mostly a passage to and from the cruise ships, the west quay of the South Harbour is considered a neglected urban area. In the quay area itself there are the Old Market Hall, harbour buildings and loading bays. On the back of the quay emerges the cliffy Observatory Park and high-priced quarters with for instance several diplomatic institutes. The Observatory Park has since the 19th century been cherished as an important spot to view the panorama towards the city centre.

In 2011, as part of the World Design Capital Helsinki Programme, the City arranged an ideas competition by the name “Colourful Harbour”.<sup>2</sup> Anyone could participate and so the City received a variety of 201 proposals from all over the country. The jury ended up in rewarding four top proposals none of which however was developed further. The competition generated fresh ideas but also concern as commentators considered some proposals too massive and dominant.

At the same time, the City of Helsinki had a dialogue with Solomon R. Guggenheim Foundation about locating a museum in Helsinki. The original location idea was the eastside of South Harbour, but in 2014 the City reserved a building site on the west quay of the Harbour and arranged an architectural competition “Guggenheim Helsinki”. Out of 1 700 entries the jury selected “Art in the City” by Moreau Kusunoki Architects. The funding scheme of the museum was however very controversial and the City Council rejected the project in the end.

The idea of a museum was not abandoned. It was soon agreed that a new museum for architecture and design would be needed and this time as a national project. The State of Finland and the City of Helsinki established a foundation for the new Museum of Architecture and Design in April 2022.<sup>3</sup> The aim is to bring the Museum of Finnish Architecture and the Design Museum, which today are separate institutions, under one roof.

Meanwhile, a two-phase “Makasiiniranta quality and concept competition” is going on to enhance the development of the area. According to the Helsinki City website<sup>4</sup>, the objective of the competition is to develop the area as part of the expanding pedestrian city centre and the seaside trail around the shores of Helsinki, and as a location for the new Architecture and Design Museum.

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<sup>2</sup> Equivalent to the Finnish titles for the novel *To Have and Have Not* by Ernest Hemingway 1937 and the film by Howard Hawks 1944.

<sup>3</sup> <https://www.admuseo.fi/eng-site/eng-articles/foundation-for-finnish-museum-of-architecture-and-design-established> (30 June 2022)

<sup>4</sup> <https://www.uuttahelsinki.fi/en/keskusta/frequently-asked-questions-south-harbour-and-makasiiniranta> (30 June 2022)

Also the local detailed plan for the area is already pending. It was started with a participation and evaluation plan, which is the regular first step in planning procedure, and a survey for the city residents. The views presented in the survey were taken into account when drafting the planning principles, which formed the basis for the competition programme. The city is also preparing history surveys on the area. The need for a Heritage Impact Assessment, once the planning option is selected, has also been raised up.

The entries for the second phase are on display in July–August 2022.<sup>5</sup> The results of the competition will be announced in autumn 2022. The winning group will continue planning the area as partnership planning in collaboration with the City. The competition winner will also serve as the implementer of the plots to be formed on the basis of the competition entry. The City Council will later decide on the implementation agreement and approval of the detailed plan created for the area. A separate architectural competition for the museum building will be organized once a final decision to build the museum has been made.<sup>6</sup>

### **Case Central Railway Station Squares**

The Central Railway Station<sup>7</sup> in Helsinki is one of the most famous buildings in Finland. It was designed by the prominent developer of Art Nouveau, Architect Eliel Saarinen, who won the architectural competition launched in 1902. The Station was completed in 1919 and thus became a symbol for the national independence freshly achieved.<sup>8</sup> Together with the Rautatientori Square, the National Gallery and the National Theatre eastside the station is a nationally important built heritage site. To the south and west of the station building are the Asema-aukio Square and the Elielinaukio Square. These two squares today are busy traffic junctions with tram and bus stops as well as cab ranks, surrounded by further remarkable buildings such as the Main Post Office and Hotel Seurahuone.

Since 2017, the Elielinaukio and Asema-aukio Squares are reserved for planning by an alliance of real estate investors and operators in the area. The alliance, together with the City of Helsinki, launched an architectural competition in 2020. According to the alliance website<sup>9</sup>, the aim of the competition is to find a functional overall plan for the area, to serve as the basis for preparing the revision of the area’s local detailed plan. Particularly the perspectives of pedestrians and cyclists are on the focus. The competition rules also allow a considerable amount of new construction with permitted height clearly over the top of the Central Railway Station and level with the Main Post Office on the other side. Feedback from the audience was collected twice during the competition. According to the alliance website<sup>10</sup>, the respondents did not form a clear majority in favour of either design, but the size of the proposed buildings was criticised. Respondents appreciated the functional urban squares, spaciousness, and preservation and addition of green areas.

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<sup>5</sup> <https://www.uuttahelsinki.fi/en/news/2022-07-04/future-south-harbour-now-open-comments> (3 August 2022)

<sup>6</sup> <https://www.admuseo.fi/eng-site/about> (30 June 2022)

<sup>7</sup> More information at <https://paarautatieasema.fi/en/> (5 August 2022)

<sup>8</sup> Finland declared independence 6 December 1917.

<sup>9</sup> <https://www.uusieliel.fi/language/en/2020/11/20/architectural-competition-for-elielinaukio-and-asema-aukio-starting-%e2%88%92-five-international-design-groups-invited-to-participate/> (2 August 2022)

<sup>10</sup> <https://www.uusieliel.fi/language/en/2021/12/10/klyyga-wins-the-architectural-and-conceptual-design-competition-for-elielinaukio-and-asema-aukio/> (2 August 2022)

The winner of the architectural competition is “Klyyga” by the Norwegian architecture firm Snøhetta. In the next phase, the preparation of a local detailed plan will begin in collaboration between the winning team, the development company, and the City of Helsinki.<sup>11</sup>

### **Case Lapinlahti Hospital Area**

Lapinlahti Hospital (Lapinlahden sairaala)<sup>12</sup> by the seaside near Helsinki City Centre was the first psychiatric institution in Finland. Opened in 1841, it is also one of the oldest psychiatric institutions in Europe. The buildings were designed by Architect Carl Ludvig Engel who was also the main architect of the Empire centre in Helsinki. From the very beginning, the plan of Lapinlahti Hospital Area included a carefully designed park for the benefit of the inmates. Today, both the buildings and the park are protected and the whole area is a nationally important built heritage site.

The psychiatric care was removed from Lapinlahti Hospital in 2006, after which the buildings were out of use for some years, awaiting general repairs. Since 2015, Helsinki City rents out the buildings to communities who in turn rent out rooms for operators in creative industry or organize activities related to the original purpose of the area.<sup>13</sup>

Helsinki City is however seeking a long-term solution with a private partner to finance the repair and maintenance of the buildings. Therefore, the City arranged an ideas competition in 2018 with an aim to find a new owner or tenant for the buildings, while the park would remain public. In the end, only one consortium tendered after the others had been dropped out or had withdrawn. The consortium would have developed the main building with several service ideas as well as built a new hotel and social housing on the southern part of the park. The idea of the new construction as well as the sale of the buildings encountered plenty of criticism, and in the end the City Council rejected the agreement.

Instead, a group of consultants was assigned with a task to draw an analysis and proposal for the development of Lapinlahti Hospital Area. The proposal, which was completed early 2021, includes a municipal real estate company and less new construction in the park area. There is a separate analysis pending concerning the development of a neighbouring area where building volume might more easily be increased.

### **Conclusion**

The cases presented above show how complex and delicate task it is to organize the preservation and development of urban landscapes. Obviously, even iconic milieus and heritage sites need preservation and development strategies. The municipalities with limited budgets seek feasible ways to finance them, which usually means collaboration with private partners who in turn expect

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<sup>11</sup> Ibid

<sup>12</sup> More information at <https://discoverhelsinki.fi/sightseeing/lapinlahti-mental-hospital-and-park-hidden-history-in-helsinki/> (5 August 2022). The institution is particularly known for the several famous inmates, such as artists, in the past.

<sup>13</sup> See for instance <https://lapinlahdenlahde.fi/en/> (3 August 2022)

new building rights and profit. At the same time, the municipalities are obligated to ensure that the legislative requirements for land use planning and the democratic process as well as the public interest and the benefit of all citizens are observed.

The recent cases in Helsinki inspired a group of societies to bring out the pamphlet “Whose City?” (“Kenen kaupunki?”)<sup>14</sup> in which several cases are discussed by professionals of architecture and urban design. The three cases presented above are included. The writers criticise the City Government of contracting out the urban planning to private investors. Especially the reservation of planning rights to certain private actors in advance seems to be testing the limits of democracy.

Design competitions as such have over decades offered public administration a method for finding ideas of high quality. They also offer the audience a way to compare and comment on different proposals. After the competition, there is room left for adjustments, second thoughts and even a turnaround.

Seeds of doubt and conflict may however arise from the fact that the preparations start long before the audience gets acquainted with the competition programme or the proposals by the competition participants. The preparatory phase seldom is as widely recognized as the competition itself and yet it determines the premises for the design proposals. These premises often become object of criticism after the launch of the competition. Therefore, early and frequent hearing of the citizens and early multi-professional cooperation are important tools for the municipal governments. Yet in the light of the cases presented, there must be preparedness to find alternative ways along the road, even after the intended finishing line, as the overall view of the case may change through common sharing of knowledge. The urban planning certainly is a long-distance run.

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<sup>14</sup> Kenen kaupunki? Helsingin kaupunkisuunnittelu ja kulttuuriympäristö törmäyskursilla. Ed. Harri Hautajärvi et al. Published 2021 by Docomomo Finland, ICOMOS Finland, Rakennustaiteen Seura and Rakennusperintö-SAFA. The pamphlet is available in Finnish at <https://icomos.fi/kenen-kaupunki/> (4 August 2022)

## SUSTAINABLE TOURISM IN HISTORIC PORT CITIES: POTENTIALS FOR PUBLIC- PRIVATE PARTNERSHIPS IN THE RED SEA REGION

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Mirna M. Khater is a master's candidate in AASTMT and a practicing architect in the field of green architecture doing initial assessments and reports as she is a LEED green associate. Have participated in several workshops nationally and internationally on topics like energy, recycling, de-urban design, and modern Mediterranean architecture.

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### Abstract:

In the recent decade, Sustainable tourism has proved its significant importance in diverse economic aspects of historic cities. This research discusses the possible roles that public-private partnerships in the sustainable development of historic cities. The first part of the research is dedicated to the exploration of the connections between tourism developments in historic contexts; the second part proposes a system of variables to develop a strategy for historic environment development. The conclusion develops a marketing model of historic destinations based on natural and cultural resources, applied to the Red sea region, a large region with several small and medium-sized historic but overlooked cities.

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### Introduction

PPPs involve various types of actors, also known as multi-stakeholders or cross-sector partnerships (Selsky and Parker, 2005; Bäckstrand, 2006; Bitzer et al., 2008; Morsink et al., 2011) and as innovative forms of governance to address sustainability (Samii et al., 2002; Pattberg et al., 2012), defined as an agreement between a public agency and a private entity, in which skills are shared to deliver a service or facility for the public (Ridizain, 2014). The term public-private partnership refers to medium to long-term arrangements between the public and private sectors to delegate some of the services that fall under the responsibilities of the public sector to the private sector, with clear agreement on shared objectives for delivering public infrastructure and/ or public services” (World Bank, 2016. pp.139, 188, 189). It’s considered a shift from the traditional perspective, in which non-governmental sectors are called to collaborate in dealing with sustainability issues (Streck, 2004), this process is defined by Webb and Pulle (2002) as partnerships “between the public sector and the private sector for the purposes of designing, planning, financing, constructing and/or operating projects which would be regarded tradition-ally as part of the public sector” contexts (Adams, Young, & Wu, 2006; Engel, Fischer, & Galetovic, 2010; Ke, 2014). PPP helps partners achieve their objectives and benefits in joint investment relationships which produce synergies that couldn’t be achieved independently (Brewer & Hayllar, 2005). Typically, a PPP arrangement requires the private sector to fund,

maintain and operate the project for a long period before transferring it to the public sector (Tieva & Junnonen, 2009). PPP became an effective approach to heritage management in western cities (de Vries, 2007), as private and public sectors engage in activities in which responsibilities are defined clearly, and Time and resources are allocated between partners (Dubini et al., 2012). The idea of using PPP in heritage conservation started in the 1960s when preserving sites required services and costs were constantly raising especially in European countries (NCPPP, 2010). However, the lack of legal framework, transparency, and public participation, make PPP results very like what happens in China (Adams et al., 2006; Ke, 2014). India also recently started to implement this method fulfilling the criteria of attraction preservation. For instance, the project of connecting Amber Palace and Jaigarh Fort by a tunnel to facilitate the tourist's path (IANS, 2012).

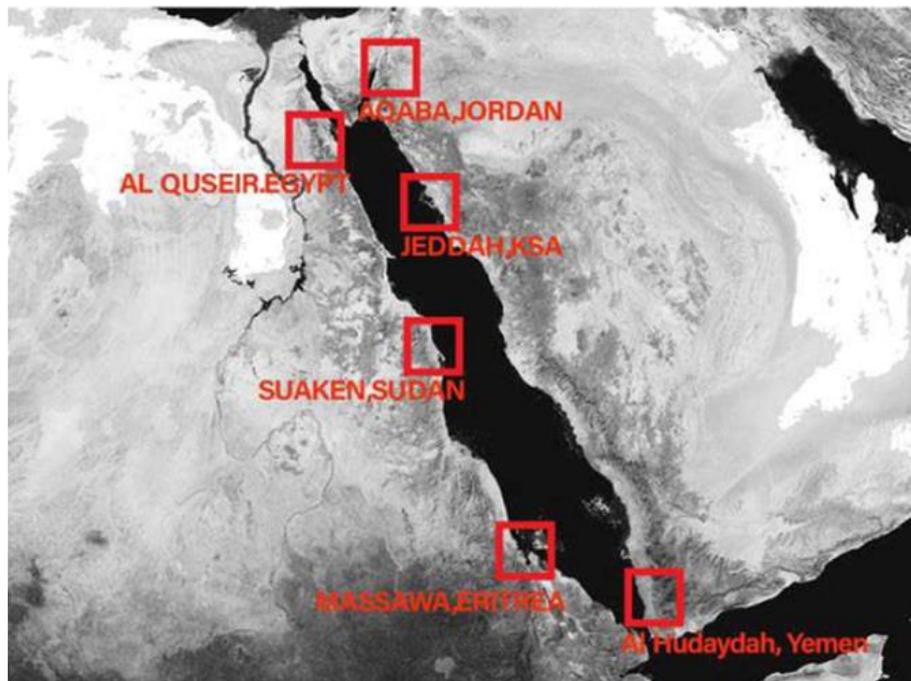
2030 Agenda for Sustainable Development appeals private sector to bring innovative solutions to overcome challenges facing sustainable development (Vaes & Huyse.,2015). The private sector's main motive is profit but to achieve quality conservation and to ensure meeting performance standards, governments involve them for their expertise, skills, and funding, by focusing on profitable solutions and targeting new markets and customers, the private sector creates positive outputs for the community (IANS, 2012; Ibid). Different PPP models described responsibilities and risks between the two sectors depending on the degree of involvement in the project for each sector. Risks are usually allocated to the party best able to manage them. As the public sector focuses on strategy, rather than operational tasks which enables the public managers to focus on key issues without being dispersed by non-significant problems (Sarmiento & Rennebog, 2016). The traditional procurement for governments is to have full responsibility by being the owner, operator, and financier. When the private sector responsibility increases, PPP methods take over until the private sector has full responsibility for the project (United Nations Economic Commission, 2008). Governments secure new infrastructure as it plays an important role in the country's economic development and since the projects become the government's property at the end of their contract life thus contracts set the technical and output specifications, service and performance standards, also methodology for periodic adjustment of availability payments, monitoring and reporting procedures, and dispute resolution mechanisms, performance deductions, termination and compensation procedures. In conclusion, PPP helps in reducing Government sovereign borrowings and associated risks while expanding the economy, increasing the quality of the service, and creating jobs (FAO and the OECD report, 2014). The proper use of the private sector skills in PPP made it possible to overcome the public system weaknesses such as inefficiency, inflexibility, not responding to market needs, not autonomy, and so on (Tilak, 2016). PPP's high capacity for modernization and development qualifies it to be one of the appropriate means to develop this sector used by governments. In developing countries using PPP would benefit the whole community, for instance, if the goal of the project is to acquire the latest technology in the field of work, a part of profits can go to research and development, continuous training of national labour, use of national companies in construction operations, implementation, and supply of production requirements (Ossman, 2019).

## Case Study: Product Concept (The hidden heritage) for the Historic Port Cities around the Red Sea Coast

### *Site:*

In the 1950s, British architect Derek H. Matthews introduced the concept of "The Red Sea Style" as he proposed that the architecture around the Red sea coast could be seen as a coherent architectural style. This traditional regional architectural style grew in the region's major historic ports ranging geographically from al-Hudayda in Yemen, Suakin in Sudan, Massawa in Eritrea, Jidda and Yanbu in Saudi Arabia and al-Quseir in Egypt.

It is noted that those historic cities share significant similarities in architectural, urban, and socio-cultural aspects, although many of them are in a bad state of conservation and often understudied and overlooked by the authorities. the Red Sea style represents a tangible case of sustained cross-cultural contact across a linked maritime region (Um, 2012) and an opportunity for sustainable tourism through PPP.



**Figure 1.** Historic port towns around the red sea coast © Authors, 2022

### *Methodology*

The concept starts with choosing and developing the product concept through recognizing the touristic profile of the selected region and selecting the possible types and routes of tourism where cultural and natural heritage motivations dominate. the main target is to make use of the existing natural and cultural resources in order to create an alternative tourist market to support a process of sustainable tourism for the whole rich but overlooked region.

### ***Concept Development***

The public-private partnership is the most suitable system for the tourist development of the region, the main arguments to support this option are:

1. The necessity to implement an integrated tourist product which is a complex set of goods and public and private services, the satisfaction of tourists depends not only on the touristic services (accommodation, meals, entertainment, transport), but also on the infrastructure and the health, security, and other public services. The tourist product should be oriented towards different target markets in order to reduce the dependency risks.
2. The partnership must be tailor-made specifically for the region taking into account the strong and attractive components, and the weak components. In addition to that, the partnership must balance between social, economic, and environment objectives without harming the authenticity and originality of the historic destination.
3. The partnership must shape a multi-dimensional image for the regional product, a region with a single image should be avoided. The region tourism themes must be diversified i.e. religious, health, history, etc.
4. The local communities/population of the historic cities should be informed about the importance of sustainable tourism and its potential.
5. Ensure the creation of a system and methodology to evaluate the process of partnership regularly. The system would allow for the adaptation of partnership and evaluation of the resultant impact related both to the specific proposed activities and to the general objectives of the region's development.
6. Involve a great number of actors and stakeholders, to take on the objectives and responsibilities they have within the partnership.
7. Create a competitive City brand to encourage investments, Promotion, distribution, and commercialization of the destination. diversified financing sources should be considered in order to sustain the process of PPP smoothly.

### **Conclusions**

The concept management will not succeed outside a regional strategy of sustainable tourist development and a wide public-private partnership. It is also very important to promote the most realistic possible image, to avoid too great contradictions between expectations and realities, in the case of valuable resources such as: accessibility, infrastructure, accommodation, etc. In promotion, attractive resources should be clearly highlighted.

The presentation of the case study allows us to get general conclusions concerning the criteria and principles which have to be met in drawing and implementing the concept of regional tourism in historic contexts which should be an efficient instrument for the region's sustainable management, especially in the difficult contexts of the studied region, integrating the historic areas and spaces into a process of economic dynamics and social progress. Briefly, it is necessary, first of all, that the product strategy starts from the offer and address the markets of alternative tourism, to be subordinate to sustainable development, to rely on the support and involvement of

local actors and stakeholders, on the development of a wide public-private partnership at the regional level and on the creation of international networks of tourist actors from similar regions. Secondly, it is necessary to create a brand image; a clear and strong emphasis should be highlighted on the promotion of the brand, and identity and not on the promotion of the product (authenticity, specificity, personality of the region), by associating the brand with the chosen product concept. Least but not last, it is necessary to implement the concept of integrated management of the product within the wide frame of regional tourism development and planning, as well as the continuous evaluation and adaptation of the product both to the evolutions of target markets and the economic, social and ecologic receiving environment.

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## PUBLIC-PRIVATE PARTNERSHIPS IN SLOVENIA: DISAPPOINTMENT, SUCCESS OR AN AFTERTHOUGHT?

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### Abstract:

Since the adoption of the Public Private Partnership Act in 2006, Slovenian municipalities have embraced public-private partnerships as a useful source of financing to bridge the gap between municipal budgetary constraints and their responsibility to provide public services. They mostly use the instrument for the provision and management of public infrastructure and public utilities. Public-private partnerships in the field of cultural heritage are quite rare. However, few successful cases show the potential of public-private partnerships in heritage conservation, especially regarding the refurbishment and revitalisation of monuments.

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### Introduction

Although various public-private partnerships (PPPs) have been established since the transition of Slovenia into market economy in the early 1990s, a comprehensive legislation of this field is quite recent: the first national act regulating PPPs, entitled (unsurprisingly) the Public-Private Partnership Act (PPPA), was adopted in 2006. When accessing this act in the official legal database,<sup>1</sup> one may notice something quite unusual, at least for Slovenia: PPPA has never been amended. As such, it stands apart from other legal acts regulating public sector. For example: public procurement has been at the same time-frame regulated by two subsequent framework acts, of which the first,<sup>2</sup> adopted in 2006, was amended eight times, whereas the current one<sup>3</sup> has been amended five times (and counting ...).

Such unique constancy of PPPA may be trivial but it may also provide some insight into the nature of PPPs and their regulation in Slovenia. For example, it may suggest that PPPA is just perfect, which is somewhat hard to believe. Alternatively, it may suggest that PPPs are actually not a very important financial instrument in Slovenia, in consequence resulting in a lack of contentious issues and providing little impetus for legislative changes.

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<sup>1</sup> See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4323>.

<sup>2</sup> The Public Procurement Act (ZJN-2), see <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4298>.

<sup>3</sup> The Public Procurement Act (ZJN-3), see <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7086>.

## EU Regulation Efforts

While it is not clear on the first sight which of these two factors is more important, if at all, a third reason for the described legislative dormancy is very obvious: The European Union is also quite passive in regulating PPPs, thus creating less need for Member States to update their national legislations. In Slovenia, namely, the most important impetus for legislative change usually comes from the EU and its diligent production of legal acts that have to be transposed into legal systems of Member States. If we again use the example of public procurement: starting in 1962, the EU institutions have produced five “generations” of public procurement legislation. The current package from 2014 contains three directives: the Directive 2014/24/EU on public procurement,<sup>1</sup> the Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (the »Utilities Directive«)<sup>2</sup> and the Directive 2014/23/EU on the award of concession contracts.<sup>3</sup>

The EU has not adopted any directive regulating PPPs, which is somewhat surprising given the strong support of PPPs by its institutions. In 2000, the European Parliament invited the European Commission to examine the possibility of preparing a draft directive aimed at introducing “homogeneous rules for the sector of concessions and other forms of PPPs”.<sup>4</sup> In 2004, the Commission has published the Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions.<sup>5</sup> The Green Paper was intended to launch a debate on whether a specific legal framework for PPPs should be drawn up at the European level. It describes PPP “phenomenon” as an instrument, which, in view of the budget constraints confronting Member States, provides private funding for the provision of public services and utilities. Another advantage, according to the Green Paper, is a transfer of knowledge and methods of the private sector to public realm. PPPs also signify a more general change in the role of the State in the economy, moving from a role of direct operator to one of organiser, regulator and controller.<sup>6</sup>

In 2006, the European Parliament adopted a resolution on PPPs and Community law on public procurement and concessions.<sup>7</sup> In this act, the Parliament provided additional reasons for the promotion of PPPs: “the cooperation between public authorities and industry can produce synergies and public benefits, enable public funds to be used more efficiently, serve as an alternative to privatisation in times of scarce budgetary funding and help public administrations to modernise by acquiring know-how from the private sector”.<sup>8</sup> However, in the same document,

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<sup>1</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0024-20180101>

<sup>2</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0025-20180101>

<sup>3</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0023-20180101>.

<sup>4</sup> Opinion of the European Parliament (first reading) on the proposal of the Commission, COM (2000) 275, 10.05.2002.

<sup>5</sup> Available at <https://op.europa.eu/en/publication-detail/-/publication/94a3f02f-ab6a-47ed-b6b2-7de60830625e/language-en>.

<sup>6</sup> Green paper, p. 3

<sup>7</sup> European Parliament Resolution on Public-private Partnerships and Community law on Public Procurement and Concessions (2006/2043(INI), available at <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX%3A52006IP0462>.

<sup>8</sup> Ibid, Recital H.

the Parliament advised against the creation of a separate legal act for PPPs (separate, that is, from public procurement legislation), but considered that there was a need for legislative initiatives in the field of concessions.<sup>9</sup>

As a result, no separate PPP directive has been adopted that would provide a comprehensive framework for regulation of PPPs in EU Member States. A partial effort may have occurred with the adoption of the above-mentioned Directive 2014/23/EU on the award of concession contracts. This Directive does not explicitly mention PPPs at all, and the relation between PPPs and concessions is also not very clear in theory.<sup>10</sup> Nonetheless, it is undoubtedly true that PPPs may be shaped in the form of a concession, which de facto makes the Concessions Directive the only instance where the EU attempted to harmonise an aspect of PPP at the EU Member States level.

The only secondary EU law specifically mentioning PPPs is the EU Regulation 1303/2013,<sup>11</sup> which lays down common provisions on the European investment and structural (ESI) funds.<sup>12</sup> As such, it does not provide a framework for regulation of PPPs in EU Member States, but only provides criteria that have to be taken into account by ESI funds when providing funds for Member States' projects that are structured as PPPs.

### **Slovenian Regulation of PPPs**

Slovenian Public-Private Partnership Act defines PPSs as relationships involving public and private partners, which result in private investment in public projects, or public co-financing of private projects that are wholly or in part in public interest.<sup>13</sup> The public partner is the State, a municipality,<sup>14</sup> or any other legal person of public law established by the State or by a municipality. A private partner is any legal or natural person, which concluded the PPP agreement with the public partner, thus acquiring the right and obligation to engage in a PPP.

Projects can be carried out in PPPs if they are in public interest and if they take place in construction, maintenance and operation of public infrastructure, provision of public utilities, or if they provide any other activity which provision is in public interest. While PPPA definition does not mention the transfer of risk from public to private partner, this essential PPP characteristic is emphasised in its other provisions. For example: PPPA introduced a “principle of balance”, which provides that in each PPP a balance of rights and obligations of public and private partners must be ensured. Although the public partner is ultimately responsible for the

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<sup>9</sup> Ibid, General comment No 2.

<sup>10</sup> See an exploration of the differences between PPPs and concessions in EU law in Bogdanowicz, Piotr et al, *Public-Private Partnerships and Concessions in the EU – An Unfinished Legislative Framework*, 2018, pp. 1—16. In Slovenia, all concessions, which provide public services, are considered a form of public-private partnership. See *Analiza možnosti za izvajanje urbanih projektov z uporabo javno zasebnega partnerstva*, Final report, Ljubljana January 2018, available at [https://www.gov.si/assets/ministrstva/MOP/Dokumenti/Urbani-razvoj/608b8e2a70/ur\\_jzp.pdf](https://www.gov.si/assets/ministrstva/MOP/Dokumenti/Urbani-razvoj/608b8e2a70/ur_jzp.pdf)

<sup>11</sup> Available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R1303>.

<sup>12</sup> ESI funds are the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime and Fisheries Fund.

<sup>13</sup> PPPA, Art. 2.

<sup>14</sup> At present, municipalities are the only type of local self-governing communities in Slovenia.

provision of goods or services that are in public interest, the operational risk must be borne by the party that can most easily control such risk. In any event, the private partner must bear at least a part of the operational risk. If in a particular partnership, the private partner does not bear any operational risk, the relationship in question is not a PPP, irrespective of its formal title.<sup>15</sup>

The PPPs in Slovenia may be established as contractual partnerships or as institutional partnerships. In a contractual PPP, the relationship between the public and private partner is strictly contractual, whereas in an institutional PPP, the partners are also bonded institutionally: by establishing a legal entity jointly held by both partners, which has the responsibility to deliver a work or service in public interest.

PPPA regulates two types of contractual partnerships: concessions and public procurement partnerships. Concessions are bilateral agreements between the public partner as the awarding authority and the private partner (a legal or natural person) as a concessionaire. The awarding authority grants the special or exclusive right to the concessionaire, which in turn performs a public service or other activity in public interest. The subject, rights and obligations of the concession relationship are determined by the concession act, which is adopted by the public partner (the Government or a municipal council). In line with the established legislative practice elsewhere, PPPA regulates two types of concessions: works concessions and services concessions. Three types of works concessions are regulated by PPPA: BTO (Build-Transfer-Operate), BOT (Build-Operate-Transfer; and BOO (Build-Own-Operate).

The inclusion of public procurement partnerships as a type of PPPs is somewhat confusing, at least on the first sight, since contrary to PPPs, the private party (economic operator) in public procurement does not bear any risk for the overall success of the project for which it is providing its services or goods. However, the closer look shows that with the "public procurement partnership" the legislator does not mean public procurements as such, but a special type of PPP where most (but not all) operational risks are borne by the public partner. Public procurement partnerships may be used in projects where the private partner only actively partakes in some phases of the project and thus assumes the operational risks only in relation to those phases or to a lesser extent.<sup>16</sup>

### **The Flaws Detected**

PPPA seems to be, given its structure and contents and excepting some idiosyncrasies (public procurement PPPs) a conventional PPP regulation with little glaring flaws. However, the Court of Audit of the Republic of Slovenia, which is the highest national institution for supervision of State accounts, budgets and public spending, has in its 2018 report<sup>17</sup> found numerous

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<sup>15</sup> PPPA, Article 15.

<sup>16</sup> See more at the website of the Institute for Public-Private Partnerships at <https://www.pppforum.si/si/180-podrocja-dela/207-koncesije-in-javno-zasebna-partnerstva>.

<sup>17</sup> See The Court of Audit of the Republic of Slovenia, Audit report: Achieving the goals of introducing public-private Partnerships, Ljubljana 2018, available at [https://www.rs-rs.si/fileadmin/user\\_upload/revizija/767/Cilji\\_JZP.pdf](https://www.rs-rs.si/fileadmin/user_upload/revizija/767/Cilji_JZP.pdf).

shortcomings of PPPA. The Court emphasised that while PPP is not, even at international level, a uniform and unambiguously defined instrument, all definitions emphasise that PPPs are projects and/or services in the public interest, whereby the operational risks are shared between the public and private partners. From a risk-sharing standpoint, PPPs can be placed between public procurement on the one hand and privatization on the other.<sup>18</sup> In public procurement, risks related to the project are borne by the public entity, while in privatization the risks are fully transferred to the private entity.

The Court of Audit also noted that PPPA does not demand that PPP contracts should always determine the sharing of risks between the public and private partners, although this is essential for the financial success and effectiveness of PPPs.<sup>19</sup> The Court also emphasised that the above-mentioned inclusion of public procurement partnerships into the PPPA does not belong in such act. In its opinion, “public procurement partnership as a form of contractual public-private partnership is contrary to the purpose of the PPP and therefore should not be counted as one of its forms, since in terms of content, this relationship is a public procurement relationship. Public procurement relations and the procedures are already regulated by regulations in the field of public procurement”.<sup>20</sup>

According to the report, there is an obvious link between these flaws of PPPA and a number of wrong interpretations of PPPs in practice. A number of proclaimed PPP projects have been identified where risks have not been proportionally borne by private partners. Such projects are therefore not PPPs but some sort of public procurement agreements.<sup>21</sup> By introducing the “public procurement partnership”, the legislator wanted to enable the projects in which the public partner assumes most of the business risks to be implemented in the form of a PPP. According to the Court, this shows a poor understanding of the difference between public procurement and PPPs. Such fallacies are also visible in practice, where, for example, municipalities grant concessions (exclusive rights) to private partners for longer periods of time despite the fact that all operational risks are born by the public partner.<sup>22</sup>

Apart from these shortcomings of PPPA, the Court also noted a lack of institutional capacity for the implementation of PPPs. Supporting services, such as trainings, exchange of information, public presentations and promotion of PPPs at national and local level, were few and inconsistent. The responsible Ministry had also not continuously monitored the implementation of PPPA and had not proposed the necessary changes to PPPA. It had also failed to prepare appropriate guidelines and standards to assist in selection, monitoring and evaluation the feasibility of implementing public-private partnership projects.<sup>23</sup> (These findings provide an answer to the question posed at the beginning: the described institutional neglect of the field is (together with the EU legislative inactivity) a major reason for the surprising lack of PPPA amendments.)

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<sup>18</sup> Ibid, p. 16.

<sup>19</sup> Ibid, p. 21.

<sup>20</sup> Ibid, p. 23.

<sup>21</sup> Ibid, p. 22.

<sup>22</sup> Ibid, p. 22.

<sup>23</sup> Ibid, pp. 33—44.

Coincidentally, at the same year that the Slovenian Court of Audit wrote its report on the state of PPPs in Slovenia, the European Court of Auditors published its own report on the use of PPP in projects that were co-founded by the EU.<sup>24</sup> It examined 12 PPP projects in the field of transport and communications in four EU Member States that were in part financed by the EU funds according to the previously mentioned Regulation (EU) 1303/2013. The Court of Auditors noted that although the Commission had been encouraging the use of PPPs for some years as a potentially effective means of delivering projects, less than a hundred PPP projects had received funding from the EU institutions and funds to date (2018). The Court identified a number of issues in the examined PPP projects, including the inappropriate risk allocation between public and private partners. The normally high remuneration rates by private partners' risk capital was often not proportional to the risks borne by these private partners. According to the Court of Auditors, the ability to identify and allocate project risks correctly and to attain the optimum balance between the shifting of risk and compensation for the risk-bearing party is a key factor for the success of a PPP. Failing to do so may have financial implications for the public partner and hamper the achievement of the project objectives. Suboptimal risk sharing arrangements may result in fewer incentives for the private partner or higher project costs and lower rewards for the public partner.<sup>25</sup>

On a positive note, a majority of projects audited by the Court of Auditors had shown good levels of service and maintenance and had the potential to keep these levels for the remaining project duration. Nonetheless, based on the issues identified, the Court of Auditors recommended to EU institutions to not promote a more intensive use of PPPs until the identified flaws were addressed.

### **PPPs in Practice**

While on the national level PPP projects are quite rare, Slovenian municipalities have embraced PPPs as a useful instrument for the provision of public services. Municipal PPP projects are numerous. They have been mostly established for the provision of public utilities (provision of water and water management, street lightning, road maintenance, waste management ...), energy contracting, refurbishment of public buildings, health services, pre-school care, assisted communities etc. Apparently, conceptual flaws of PPP legislation and insufficient supporting services detected by the Slovenian Court of Audit have not hindered municipalities and private partners from entering into PPP relationships. While due to the described systemic flaws some PPPs undoubtedly are not in public interest and are damaging to public finances or public goods, this instrument in general apparently satisfies the need of municipalities to provide necessary public services within their limited budgetary frameworks.

Given the lack of monitoring and statistical data about PPP, the exact data about the number and type of PPPs related to heritage conservation cannot be established. Media articles, scientific

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<sup>24</sup> European Court of Auditors Special Report No 09/2018 "Public Private Partnerships in the EU: Widespread shortcomings and limited benefits", available at <https://op.europa.eu/webpub/eca/special-reports/ppp-9-2018/en/>.

<sup>25</sup> Ibid, point 56.

papers and other sources suggest that PPPs dedicated to protection of cultural heritage are quite rare. The most common seem to be PPP projects aimed at energy refurbishment of architectural monuments. Such PPPs are usually concluded in the form of an energy performance contract, where the upgrades in the energy efficiency of a building are founded through reductions of energy costs of the same building.<sup>26</sup>

Perhaps the best-documented cultural conservation PPP is the project for revitalisation of an 18th century Pannonian-style country house rather grandly called “Bathyani mansion”.<sup>27</sup> Due to its heritage value, the mansion, together with the accompanying buildings and an extensive park, was designated a cultural monument of local importance. The monument, which was owned by the municipality, had been out of use since 1998 and in the state of ever-greater disrepair. In 2012, the municipality gave up hope: the mayor proposed to strike down the protection status and to demolish the mansion, since it was in a state of dereliction and structurally unsound. The municipality in question is quite small; it had a EUR 4,000,000 annual budget at the time, and could not have afforded to finance an estimated EUR 1,600,000 restoration of the monument. It was argued that a new building would cost only half as much as the restoration of the existing one.

However, in 2013 the municipal council decided to try to refurbish and revitalise the mansion with the use of a PPP. The initial assessment showed that since no funds were available for its restoration, public procurement was not a possible option. The envisioned PPP was clearly in public interest since it would serve the protection of heritage, enable the economic use of public finances and provide new municipal infrastructure. In 2014, the municipality published an ordinance for the establishment of PPP, and subsequently signed a partnership agreement for the refurbishment of the mansion and its parks with the chosen private partner - a local medical practice. The objective was to refurbish the mansion and its surrounding park and to demolish the buildings of less cultural value. In their place, a new building was planned, which would serve as a local health centre operated by the private partner. The Institute for the Protection of Cultural Heritage of Slovenia gave its development consent to the project, thus confirming that the proposed development was not contrary to the protection status of the monument.

The partnership was designed as a short-term relationship with clear division of costs. The total costs were estimated to be EUR 840,000, where the municipality would contribute EUR 181,000 (partially in kind) and the private partner the remaining EUR 659,000. In 2016, the project was

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<sup>26</sup> See Makuc, Neva, Revitalizacija stavb kulturne dediščine preko javno-zasebnega partnerstva: primer Občine Črnomelj, *Kronika* Vol. 66 (2018), pp. 139—146. Available at <https://kronika.zzds.si/kronika/article/view/512/75>. A manual for the PPPs in cultural heritage has also been published in 2017 as a result of an Interreg CE Restaura project – see Jelinčič, Daniela Angelina et al: *Priročnik za lokalne skupnosti o javno-zasebnem partnerstvu glede strategij za revitalizacijo kulturne dediščine*, 2018. Available at [www.interreg-central.eu/Content.Node/O.T2.2.3.pdf](http://www.interreg-central.eu/Content.Node/O.T2.2.3.pdf).

<sup>27</sup> The case is described in Bahor, Maja et al: *Javno-zasebno partnerstvo za razvoj podeželja*, Univerza v Ljubljani, p. 105—125. Available at [www.pf.uni-lj.si/media/javno-zasebno.partnerstvo.za.razvoj.podezelja.pdf](http://www.pf.uni-lj.si/media/javno-zasebno.partnerstvo.za.razvoj.podezelja.pdf) See photos of the mansion before the revitalisation at <https://gradovislovenije.si/project/dvorec-tisina/> and the photos of a completed project at <https://gradovislovenije.si/project/dvorec-tisina/>.

completed and the PPP was terminated. The municipality remains the owner of the refurbished mansion, whereas the new building was transferred into the ownership of the private partner. It is interesting that the partnership was not devised as a concession or as an institutional PPP, but as a public procurement partnership, - a type of PPP much reviled by the 2018 Court of Audit report. This project and its success shows that PPPs, if correctly devised, comprehensively prepared and properly executed, may serve as a useful tool in heritage conservation.

## BENEFITS AND CHALLENGES TO THE USE OF PUBLIC AND PRIVATE PARTNERSHIP IN CULTURAL HERITAGE CONSERVATION IN IRELAND

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### Abstract:

Since the adoption of the Public Private Partnership Act in 2006, Slovenian municipalities have embraced public-private partnerships as a useful source of financing to bridge the gap between municipal budgetary constraints and their responsibility to provide public services. They mostly use the instrument for the provision and management of public infrastructure and public utilities. Public-private partnerships in the field of cultural heritage are quite rare. However, few successful cases show the potential of public-private partnerships in heritage conservation, especially regarding the refurbishment and revitalisation of monuments.

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Research on the rationale behind the introduction and adoption of Public Private Partnership (PPP) suggests that Ireland, a latecomer to PPP only adopting it in 1998, includes value for money, performance measurement and public resource allocation. When PPP's were first used in Ireland they were implemented in large infrastructural projects such as roadbuilding, urban regeneration etc. where the projects had been identified but the fiscal resources were not available.<sup>1</sup> It was thought that PPP's could bring efficiency gains to the public sector<sup>2</sup> especially in the context the curtailment of public spending.

The Irish Government defines PPP as a public services/infrastructure procurement method that emphasises value for money and delivering quality public services.<sup>3</sup> There are two types of

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<sup>1</sup> Sheppard, G., & Beck, M. (2016). The evolution of public-private partnership in Ireland: a sustainable pathway? *International Review of Administrative Sciences*. <https://doi.org/10.1177/0020852316641494>  
[https://pureadmin.qub.ac.uk/ws/portalfiles/portal/64021396/Sheppard\\_and\\_Beck\\_IRAS.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/64021396/Sheppard_and_Beck_IRAS.pdf)

<sup>2</sup> NES, 1999.

<sup>3</sup> <https://www.ppp.gov.ie>

arrangement, one using private finance and the other for service delivery on behalf of the public sector. So, the Irish history of private sector involvement in service and infrastructure delivery has included partnering with religious institutions in the provision of schools and hospitals and partnering with the private sector in the provision of toll roads and the privatisation of refuse collection. Whilst many of the projects in which PPP was the model were largely voluntary initially, there is currently a view that PPP adoption has shifted to a more coercive model due to the restricted access of the public sector<sup>1</sup> to borrowing. In that sense this type of partnership has become an economic necessity. So, it is not surprising that a supportive and comprehensive legal framework has been developed<sup>2</sup> in Ireland that is widely used with a context of strong political commitment.<sup>3</sup>

The National Development Finance Agency (NDFA), established in 2002, funds infrastructure through long-term debt and equity. The role of the NDFA was expanded through amending legislation which tasked it with establishing a Centre of Expertise for procuring PPP projects on behalf of State authorities. The NDFA was further authorised to provide contract management services for PPPs projects. The NDFA advises State authorities on the optimal financing of public investment projects in order to achieve value for money. The NDFA also procures and delivers Public Private Partnership (PPP) projects as requested by State authorities (with certain exceptions such as Transport Infrastructure Ireland). In this role, the NDFA is responsible for delivering the procurement of a project referred to it and hands it over to the relevant sponsoring body after construction is complete and the asset is operational. The Office of Government Procurement (OGP) plays a central role in helping the State to achieve value for money when buying goods and services and it operates as a Division office within the administrative structure of the Department of Public Expenditure and Reform (DPER). The OGP develops and manages procurement policy and procedures which lead to better procurement practices.

In terms of a regulatory framework for PPP’s in Ireland Information on procurement policy and Public procurement is governed by both EU and National rules. The National Public Procurement Policy Framework<sup>4</sup> consists of 5 strands:

- Legislation (Directives, Regulations)
- Government Policy (for example: Circulars)
- Capital Works Management Framework for Public Works
- General Procurement Guidelines for Goods and Services
- More detailed technical guidelines, template documentation and information notes

as issued periodically by the Policy Unit of the OGP.

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<sup>1</sup> Sheppard, G., & Beck, M. (2016).

<sup>2</sup> In 2001 and 2002 Ireland passed acts to facilitate state participation in PPPs: The Transport (Railway Infrastructure) Act 2001; the State Authorities (Public Private Partnership Arrangements) Act 2002; and the National Development Finance Agency Act 2002.

<sup>3</sup> Ibid Sheppard, G., & Beck, M. (2016).

<sup>4</sup> The framework sets out the procurement procedures to be followed by Government Departments and State Bodies under national and EU rules. It supports and enables Public Bodies to adopt procedures to meet their Public Procurement requirements and facilitates compliance with EU and National Procurement Rules. General guidance on procurement matters is published by the Office of Government Procurement.

The Office of Government Procurement was established in 2013 and commenced sourcing operations in 2014 and, together with Health, Defence, Education and Local Government has responsibility for sourcing goods and services on behalf of the public service. In addition, the OGP also has responsibility for procurement policy and procedures for the entire public sector.<sup>5</sup> EU law sets out minimum harmonised public procurement rules. These rules govern the way public authorities and certain utility operators purchase goods, works and services. The rules are set out in three principal EU Directives which are transposed into national legislation and apply to tenders for public contracts whose monetary value exceeds a certain threshold. For tenders of lower value, national rules apply. Nevertheless, these national rules also have to respect the general principles of EU law and the relevant Directives.<sup>6</sup>

The reforms across these Directives are designed to improve the effectiveness of the regime to codify recent procurement case law.<sup>7</sup> This should allow public bodies to carry out procurement faster and with less ‘red tape’. In broader economic terms, the new features can facilitate better VFM outcomes for the taxpayer from public procurement and facilitate greater SME participation and access to public procurement opportunities.<sup>8</sup> The EU Procurement Directives were transposed into Irish Law in 2016 and 2017 by way of National Regulations contained in Statutory Instruments as follows:

- S.I. No. 284 of 2016 (the “2016 Regulations”)
- S.I. No. 286 of 2016 (the “2016 Utilities Regulations”)
- S.I. No. 203 of 2017 (the “2017 Concessions Regulations”)

### ***Review of the Public Works Contracts***

The performance of Public Works Contracts was reviewed in 2014.<sup>9</sup> The report recommended a number of interim amendments and the development of a medium-term perspective.<sup>10</sup> Strategy for construction procurement: Circular 01/2016 sets out the revised arrangements for the procurement of public works contracts. The procurement requirements relate to tender documentation and also to forms of contract. I propose to discuss the contractual aspects for public

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<sup>5</sup> Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money (VFM). Government policy is that public bodies, where possible, should make use of all such central arrangements. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a VFM justification

<sup>6</sup> The current EU Directives are:  
Directive 2014/24/EU on public procurement (goods, services and works)  
Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors  
Directive 2014/23/EU on the award of Concession Contracts  
The new Public Authorities Contracts Directive (2014/24/EU: the “Classical”) and the Utilities Directive (2014/25/EU: the “Utilities”) reflect the existing framework of procurement law.

<sup>7</sup> The incremental changes in these Regulations are intended to help streamline public procurement processes and embed more simplified and flexible rules for the selection of suppliers

<sup>8</sup> The essential Treaty principles include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment. There is a strongly implied requirement to publicise contracts of significant value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders.

<sup>9</sup> <https://constructionprocurement.gov.ie/capital-works-management-framework/>

<sup>10</sup> <https://constructionprocurement.gov.ie/wp-content/uploads/Report-on-the-Review-of-the-Performance-of-the-Public-Works-Contract.pdf>

procurement requirements in the context of conservation and heritage projects. The OGP has developed a series of contract typologies to suit a range of circumstances. The Capital Works Management Framework (CWMF)<sup>11</sup> is a structure that has been developed to deliver the Government’s objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents. Before embarking on a public works project, the Contracting Authority / Employer needs to identify the contract type that is most suitable.

Factors that need to be taken into account in deciding which route to take include the following:

- The optimal level of risk that a Contracting Authority wishes to transfer;
- What total risk is tolerable for contractors;
- What needs to be done to achieve optimal risk transfer;
- Where is the necessary design expertise located;
- How important is the performance of the completed works;
- Anticipated market response; and
- Delivery time of end product.

The result of these considerations will guide the Contracting Authority in choosing a particular contract type. For large scale projects with a value in excess of €100m or indeed very technically complex projects that require the expertise of the Contractor as early as possible, there is a standard form available for use the Early Collaboration Contract.<sup>12</sup>

Public Works Contracts (Employer Design) can be used to great effect for construction works on heritage projects.<sup>13</sup> Employer-design contracts are most appropriate in the following circumstances:

- Refurbishment or alteration of existing buildings or facilities;
- Works on historic buildings or on heritage sites;
- Works that a contractor might be unable to scope accurately, or where there are significant unknowns leading to significant risks;
- If the Contracting Authority cannot commit to proceeding to the construction stage until the design has been fully developed;
- Where a design competition is held;
- Where the Contracting Authority has in-house design capacity, or wishes to use design

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<sup>11</sup> An integrated set of contract forms, guidance notes and standard templates that are the necessary toolkit for the satisfactory delivery of a works project. The guidance is to assist Contracting Authorities in the application of the Public Works Contracts when selecting procurement and contract strategies to achieve their project objectives. This covers the alternative strategies and the considerations that contracting authorities need to take into account in deciding which of the public works contracts to use on a particular project.

<sup>12</sup> PW-CF10 Public Works Contract for Early Collaboration, allows for tendering for Early Services, Specific Tasks and Target Price. The Contract may only be used with advance permission from the Government Contracts Committee for Construction and it would be appropriate to take expert advice if unsure whether or not to proceed. In a simple case, the Early Services is design development and obtaining planning consents, and the Task is the physical works. If there is more than one Task, they would normally be different phases of physical works.

<sup>13</sup> Such projects relate to works to protected structures, existing structures within the curtilage of a protected structure or the attendant ground, or structures to which the National Monuments Acts apply.

capacity from elsewhere in the public sector, or if the Contracting Authority wishes to build to a pre-existing standard design;

- If the Contracting Authority needs to retain a high level of control over the quality aspects of the design; and
- If the Contracting Authority wishes to retain control over the design process, or to choose between alternative proposed solutions.

The Public Works Investigation Contract<sup>14</sup> must be used for building or civil engineering investigation works above and/or below ground with a value of €50,000 (including VAT) or more. The Public Works (Short) Investigation Contract<sup>15</sup> should be used for small building or civil engineering investigation works above and/or below ground with a value of €50,000 (including VAT) or less. Investigation studies: Investigation studies are works that are carried out in advance of permanent works to identify and quantify potential risks that are concealed. The contracts used have been specially developed to suit all types of investigation work that might be carried out for public projects. Under the Public Works Contracts there is a requirement that all design work should be comprehensively defined as input specifications and designs (i.e. the traditional approach) or output specifications (i.e. design and build) before a project is put out to tender. This means that all unknown risks in so far as possible in relation to design are identified and resolved before the tender competition.<sup>16</sup>

Public expenditure on construction works for heritage projects is subject to the same constraints<sup>17</sup> as expenditure for works on a green field site. To ensure that greater cost certainty at tender stage is achieved on heritage projects, where the type and quantum of work is difficult to define in advance, a heritage contract strategy has been developed by the Office of Public Works(OPW). The opportunity was taken to examine and observe how the available contract options could perform in the course of a major conservation and restoration project on the Leinster House complex, the seat of Government in Ireland, between December 2017 and August 2019 (Figure 1). “Every aspect of the house from the basement to the attic and roof has been carefully restored and conserved, breathing new life back into the building. With this extensive restoration work carefully managed by the Office of Public Works (OPW) and the Houses of the Oireachtas, Georgian Leinster House has been preserved for future generations of Members as the home of Parliamentary democracy and for our many thousands of welcome visitors each year.”<sup>18</sup>

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<sup>14</sup> PW-CF7

<sup>15</sup> PW-CF8

<sup>16</sup> An investigation study should be conducted in the following circumstances:

Below Ground: Where excavations are required, the site should be subjected to a site investigation so that any subsequent design of the facility to be provided can be comprehensively defined and detailed based on factual ground information.

Above Ground: Where refurbishment/alteration work to an existing structure is required all areas that are concealed should be opened up and investigated so that any subsequent design can be comprehensively defined and detailed based on factual information before tenders are sought for the main works.

<sup>17</sup> The constraints are: value for money, greater cost certainty at tender stage and more efficient delivery of projects.

<sup>18</sup> <https://www.oireachtas.ie/en/visit-and-learn/history-and-buildings/buildings/conservation-and-restoration/>



**Figure 1.** Leinster House, the seat of the Irish Parliament built in 1745 as a private residence originally  
© Wikimedia Commons

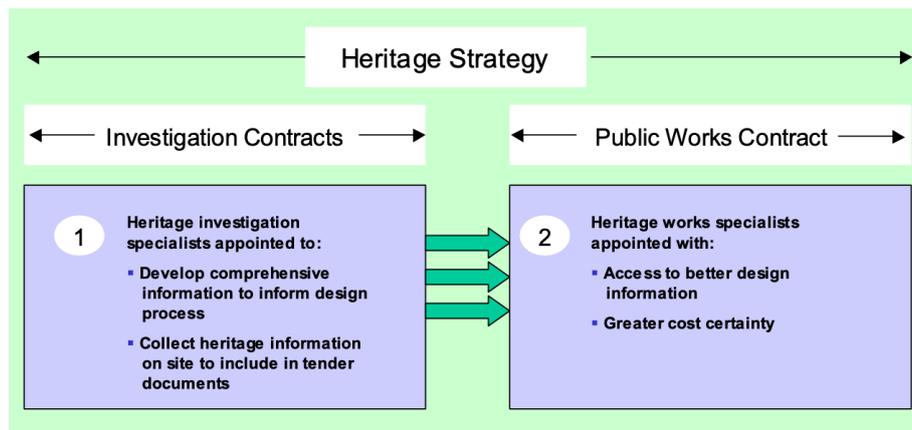
The strategy involves: the use of the two public works contracts previously referred to namely the Employer Design fixed price lump sum contract<sup>19</sup>, and an Investigation contract<sup>20</sup> specially developed for this type of investigation work (Figure 2). The second aspect to this strategy is the need for the procurer to have a competent knowledge of the procurement rules. For this to operate successfully the importance of the Procurer’s knowledge, experience and judgment is critical. This is because opening up part of a structure brings down risk, which is identified, and a contract sum in relation to the work is identified and managed, understanding of the issues, knowledge of materials, ability to identify the most skilled and appropriate craftsmen and very importantly the ability to exercise judgment well. The Strategy seeks to ensure the integrity of conservation work, and to that end to maintain control over the selection of specialists to undertake the work.<sup>21</sup> In any one heritage project, the investigation contracts need to be balanced with the main contract so that the greater portion of the construction work is done under the main contract.

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<sup>19</sup> i.e. PW-CF1, PW-CF3, PW-CF5, or PW-CF6

<sup>20</sup> i.e. PW-CF7 and PW-CF8

<sup>21</sup> The appropriate use of the two contracts should achieve the objective set at the outset i.e. greater cost certainty at tender stage. Ultimately the purpose of investigation contracts is to obtain sufficient information to allow comprehensive designs and specifications to be developed and competitively priced so as to ensure greater cost certainty for the main works at contract award stage. The investigation contract is a standalone contract which includes the facility for the Employers Representative to instruct the contractor to change the ‘scope’ of the work as may be deemed appropriate. Under ‘Scope’ the investigation contracts allow for opening up inaccessible areas for examination, and permanently or temporarily making good any elements which have been disturbed.



**Figure 2.** Heritage strategy for conservation and restoration project on the Leinster House complex

There are two equally important roles that specialists fulfil on heritage projects: Heritage investigation specialists are appointed by the Contracting Authority under an investigation contract<sup>22</sup> and Heritage Works specialists are employed by the Works Contractor to carry out the detailed specialist work specified and illustrated in the Works Requirements.<sup>23</sup> In limited situations heritage investigation specialists may be engaged for both parts of the heritage project i.e. both the investigation and execution work. In particular, there are two situations in which this can arise: First where no works contractor is involved: in this case the heritage investigation specialist appointed by the Contracting Authority carries out all the work, investigation and execution under the Investigation Contract.<sup>24</sup> Secondly where the heritage

<sup>22</sup> PW-CF7 or PW-CF8 - They carry out investigation studies and tests so that the Design Team can determine in as thorough a manner as possible the likely scope and quantum of the works that will subsequently be undertaken by a main contractor under a separate Public Works Contract. The heritage investigation specialist appointed under the Investigation Contract is responsible for carrying out tests, opening up structures, gathering and collating all the necessary heritage-related information, which can subsequently be drawn on and can assist in the development of designs and specifications that are to be included in the tender documents for the main contract. This approach brings a number of key advantages:  
Comprehensive design information is developed earlier in the cycle, and before the Contractor for the construction is appointed;  
Authoritative heritage information is included in the tender documents; and  
Greater cost certainty is achieved because the full heritage implications of the project are known in advance of the appointment of the main Contractor.

<sup>23</sup> in accordance with section 8.2 of the Invitation to Tender Document Note: If there is a panel of specialists included in the tender documents, this is made clear by the Employer in the tender documents. They are named in the tender documents (i.e. Works Requirements) in panels for the specialist areas of work identified in the Works Requirements.  
Pricing of specialists’ work: At tender evaluation stage the Pricing Document of the preferred tenderer should be examined to see that a reasonable allocation of money has been identified for each area of specialist work. If it is felt that the price is too low and the Employer is otherwise satisfied with the rest of the main contract tender price a more realistic price should be arrived at for the specialist area of work through the re-balancing of rates and included (in consultation with the tenderer – prior to issue of notice to unsuccessful tenderers) without affecting the overall tendered fixed price for the main works.

<sup>24</sup> PW-CF7 or PW- CF8 - The heritage works specialist is employed by the Contractor, and can be:  
Pre-qualified with Works Contractors who identify their specialists in the Works Contractors’ suitability assessment material submitted; or  
Included on a panel in main contract tender documents drawn up by the Employer; and can then be selected by Works Contractors and named in their main contract tenders; or  
Alternatives proposed by Works Contractors in their tenders to those on a panel in main contract tender documents. Note that if the panel arrangement is used, then this must be made clear by the Employer in the tender documents.

investigation specialist’s contract is novated to the Works Contractor: in this case the heritage investigation specialist appointed by the Contracting Authority carries out the initial investigation work under the Investigation Contract,<sup>25</sup> and later that contract is then novated to the Works Contractor for the execution of the detailed specialist works specified in the Works Requirements. Following a tender competition for the main contract for a heritage project, the Main Contractor is appointed under the Public Works Contract for Building Work Designed by the Employer.<sup>26</sup> The design information in the main contract tender documentation will have been influenced by the outputs from the proceeding Investigation contract. The tender competition for the main works should be between competent contractors experienced in heritage work who have won a place on a short list in a separate qualitative assessment competition.

As an outcome of the implementation of the strategy in the course of the works at the Leinster House Complex there is now a specific Public Works Contract for refurbishment and conservation works <sup>27</sup> which it is believed having been tested will bring about the best outcome for historic built fabric in the course of conservation or restoration works. This contract is issued by the Office of Government Procurement under licence to the Commissioners of Public Works in Ireland for their exclusive use on refurbishment and conservation works projects. <sup>28</sup>

The Minister for Heritage<sup>29</sup> has welcomed the use of strategic partnerships between the public and private sector as an important means to greater protect, develop and manage Ireland’s natural, built and cultural heritage. This has been demonstrated through the signing of a range of strategic partnership agreements. For example, at the historic site of Moore Hall an MOU was signed signifying the commitment to strategic partnerships across multiple agencies. The development of a strategic partnership between Mayo County Council, the National Parks and Wildlife Service and Coillte, addresses a longstanding plan to preserve and develop a very important historic landscape, house and environment.

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<sup>25</sup> PW-CF7 or PW-CF8

<sup>26</sup> PW-CF1, PW-CF3, PW-CF5 and PW-CF6

<sup>27</sup> Public Works Contract for Refurbishment and Conservation Works  
Document Reference PW-CRC v1.1 20 November 2020  
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Government Buildings Upper Merrion Street Dublin 2

<sup>28</sup> Any provisional sums included in the Pricing Document are at the entire disposal of the Employer's Representative and are used only as the Employer's Representative may instruct by Change Order. The Employer's Representative may give the Contractor (1) instructions, which are either (a) directions in accordance with the Contract or (b) Change Orders and (2) objections, in accordance with sub-clause 4.7. The Employer's Representative may give the Contractor or the Employer, or both (1) opinions, assessments, determinations and certificates, in accordance with the Contract and (2) other communications [including clarifications] in accordance with the Contract or the Employer's Representative considers appropriate. To the extent that a provisional sum is not so used, it will be deducted from the Contract Sum. If the Employer's Representative uses a provisional sum by instructing the Contractor under sub-clause 5.4.4 to appoint a Subcontractor for conservation, restoration or other work on existing buildings, the Contract Sum shall be reduced by the provisional sum and increased by (a) the subcontract price and (b) the Contract value of any work to be done directly by the Contractor in compliance with the instruction.

<sup>29</sup> <https://www.mayonews.ie/news/37147-new-agreement-signed-for-moorehall-and-lough-carra>

A new framework for Heritage ‘Heritage Ireland, 2030’<sup>30</sup>, which is to meet the Programme for Government commitment to deliver a new national heritage plan. recognises that in the management of heritage the responsibilities fall to a wide range of stakeholders (Figure 3). Irish Government policy on Heritage,<sup>31</sup> has indicated that it will seek to support agencies and bodies and build bridges between existing and emerging policies to strengthen the impact of heritage investment and support. Theme 3 in that publication states that, heritage, as in many other areas of public policy benefits from the development of successful partnerships which are crucial to meet our collective responsibilities. This will strengthen heritage partnerships to ensure that we are all better equipped and as effective as we can be in caring for our heritage. This indicates a green light for partnerships and collaborations.



Figure 3. Heritage Ireland 2030: A Framework for Heritage © <https://www.gov.ie/>

### Public Private Partnerships and the Third Sector

Formed in 2016, a Strategic Partnership was set up between Fáilte Ireland, the Office of Public Works (OPW) and the Department of Housing, Local Government and Heritage (DHLGH). The main purpose of the partnership is to invest in a number of iconic attractions of national and international significance to deliver world-class visitor experiences which will in turn increase visitor numbers to these sites and the surrounding areas. In total, 16 capital investment projects were commenced at some of Ireland’s most visited heritage attractions. In Ireland the Office of public works (OPW) is responsible for the maintenance and presentation of the heritage estate in State care. DHLGH is responsible for heritage policy and is a key partner to OPW.<sup>32</sup> One of Ireland’s World Heritage Properties, Brú na Bóinne (Figure 4), has demonstrated the use of ‘strategic partnerships’ between the Office of Public Works, the Department of Housing, Local Government and Heritage, and Fáilte Ireland ( the National Tourism Development Authority). Recent projects include two projects at Newgrange, and one at Knowth House both within Brú

<sup>30</sup> Since February 2022

<sup>31</sup> through the Department of Housing, Local Government and Heritage

<sup>32</sup> Heritage Ireland 2030 states that it will support the work of OPW alongside Local Authorities in conserving, maintaining and making accessible our national heritage estate

na Bóinne. A major investment by the strategic partners was made to provide a new immersive visitor experience to showcase the archaeological and historical heritage of Brú na Bóinne in a way that is evocative, absorbing and entertaining for visitors while increasing the capacity of visitors to the site and monuments.<sup>33</sup> The newly established Knowth visitor hub, is a continuation of the upgraded Brú na Bóinne visitor experience and forms a second phase of a three phase investment worth 7 million under a strategic partnership agreement.<sup>34</sup> Visitors to Knowth will be welcomed for a greatly extended season for the first time. The enhanced visitor’s hub experience includes improved interpretation to tell the story of the history of the 50-year archaeological excavation of the site by Professor George Eogan, the significance of the site’s Megalithic art and its importance in national and international terms.



**Figure 4.** Brú na Bóinne World Heritage Property: exhibition in the visitors centre at Newgrange © *Mona O’Rourke*

There are three sectors involved in PPPs. They are, first, the public sector, which may include one or all levels of government, and, second, the private sector, which includes business and investor organizations. Of increasing importance and particular relevance to PPPs used for heritage conservation is the third sector. The third sector may be described as non-government, social, and community-based institutions, and it may also include people living near a heritage site. These

<sup>33</sup> It will tell the story of how the Neolithic Passage Tomb at Newgrange was constructed around 3,200 BC, and the way it aligns with the rising sun at the time of the Winter Solstice on 21 December. New information on the immensely rich archaeological landscape of the World Heritage Site around Newgrange will also be brought to life at the centre for the first time, with exciting discoveries made during the summer of 2018 which have since been investigated by the National Monuments Service.

<sup>34</sup> The visitors experience is offering a large digital exhibition exploring the rock art of Knowth and accompanied by engaging interactives and audio visuals. The investment includes toilets and an upgraded OPW parking facility to accommodate a new fleet of electric buses which was developed using sustainable tourism principles to minimise visitor impact to the site.

recent projects might have benefited should the communities in these locations have been involved, informed and consulted about the projects from an early stage. There was no presentation of the ideas for these three projects, no explanation about why they were being done. Whilst there is a management plan in place since 2017 for the Property, none of these projects featured there. I suspect they were initiated after that date. It is also unclear whether these projects were assessed for impact on the OUV of the World Heritage Property. There was no voice belonging to non-governmental bodies, social or community institutions and the local community concerning the recent projects at Brú na Bóinne. The conservation of cultural heritage requires the involvement of multiple players across the public, private and non-government sectors, not only to initiate and carry out conservation but also to sustain the sense of place.

Finally, I would like to introduce a very inspirational project, the Nano Nagle Place project, where the kind of engagement previously referred to with important stakeholders, and the communities took place and influenced the outcome.

Nano Nagle was born in County Cork in 1718 to a family of wealth and privilege. This was not the way of life for most Irish people as the 18<sup>th</sup> Century which was a bleak and dark period of Irish History. The potato blight was wreaking its devastating consequences on the lives of most Catholics who were dominated by repressive and unjust English Laws known as the Penal Laws. They brought denial of education, denial of ownership of property and denial of freedom of religious worship. They severely diminished the quality of life for all Irish Catholics but particularly for the poor.<sup>35</sup> It was against this landscape that Nano Nagle emerged. To contextualise the educational landscape of Cork, in the 1750s the only access for poor children was through a protestant charity school which was for boys only. Nanos early education was under the tutelage of a wandering schoolmaster, at a hedge school. She was then smuggled out of Ireland to complete her education it is believed possibly in the Benedictine Abbey at Ypres in Belgium or in Paris, this would have been exiled from her parents.

Nano’s father died very suddenly when she was abroad, and she had to return from the continent to move with her widowed mother and her sister to Dublin. During that time, she had seen abject poverty as she was no longer shielded against it, so she saw sickness disease, famine and ignorance. Nano abandoned her life of privilege to work with the poor and oppressed who were denied the fundamental right of Irish people to an education which she believed was the prerogative of all not just the wealthy. She believed in the power of education to transform lives. Influenced by the Petit École movement in France she started setting up what she described as her ‘little schools’ in secret because of the political context. She went around all seven of these schools daily. Nano’s vision of education was not restricted to children it also embraced adults. She did what came to be described as her ‘lantern work’ visiting the poor in slums in the evening after schools were closed.

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<sup>35</sup> Breaches of these laws resulted in certain punishment, either prison or the gallows or deportation and lifelong exile from their native land and loved ones. The effects of these Penal Laws were in evidence right up until Catholic Emancipation in 1829.

This was a woman who had a Vision, Courage and Commitment to action. She had a deep social awareness and a desire for social justice as she sought to help them to live with dignity and hope. Nano wanted this legacy to endure so she founded a religious congregation The Presentation Sisters, the first religious foundation in Ireland for many centuries. This developed into a worldwide network focused on giving hope and transformation to the needy across geographical, political and cultural borders. This is the background to the project which I would like to introduce, Nano Nagle Place, in the City of Cork. This project could never have taken place had Nano Nagle’s Vision not been alive and well. Her Ethos, Vision and Values were adopted for all of the facilities which were created within the historic complex.

The Brief had as its primary focus the reuse and adaptation of the existing building stock, with new architectural intervention carried out only where necessary in order to satisfy access issues and to facilitate new uses on the site. The master planning of the South Presentation Convent recognised the site as the setting of a complex of buildings which developed over almost 250 years. The buildings were regarded as occupiers of this setting with unique relationships to one another and to their grounds and wider context. It was accepted that these buildings now needed to serve a different purpose from their original conception, and that subtle interventions were required to knit these renewed buildings into a coherent group. The proposals were therefore light-handed, with the original buildings and their retained settings remaining dominant features of the site.

The new educational building to the Western Apex, the Cork Centre for Architectural Education, emerged from an opportunity to design a building which would integrate with the overall complex while essentially contributing to the redevelopment’s sustained future. Opened in 2017, Nano Nagle Place is a multi-faceted organisation incorporating the convent, ministry activities, a heritage centre, gardens open to the public and a café. It is home to two charities, the Lantern Project and Cork Migrant Centre; education charities offering supports to vulnerable adults, migrants to Cork city from various countries and increasingly to those in direct provision.

The buildings of the South Presentation Convent are located within a 3.75-acre site in an historic area of Cork city, known as the South Parish, comprising a triangular shaped site with boundaries to Evergreen Street, Douglas Street and Nicholas Street. The landmark site is set within an area of historic cultural importance, with the remains of the Red Abbey, St Finbarr’s Cathedral. Elizabeth Fort and Dunbar Street Catholic church all within a short walking distance. The Presentation Sisters formed a limited company, granted charitable status, in order to develop and execute a planned development that maintained the integrity of the heritage of the site, reusing the core buildings to progress the mission, vision and values of Nano Nagle and the Presentation Congregation.

The Presentation Sisters’ mission statement stated that: *‘To preserve the heritage and ethos of Nano Nagle and the Presentation Congregation, the Presentation Sisters have made the decision to develop the site, preserving its historic heritage, creating a sacred place for contemplation and reflection and developing a new sustainable resource to share with the Cork Community – called*

*Nano Nagle Place*. The South Presentation Convent site has grown and developed over 250 years from modest beginnings when it was founded by Nano Nagle in the 1770s. The site has seen much change over the centuries with the acquisition of neighbouring land allowing for the expansion of the convent with additional accommodation, schools, chapels and gardens. Due to the considerable reduction in the number of Sisters now living in the convent, and the relocation of the schools off site, the great legacy of the South Presentation site required a reimagining that embraced the past yet created a viable future for the community and the existing building stock.

The master planning of the site identified a number of key factors which were considered essential for the successful redevelopment of the convent buildings and grounds which would allow for multiple uses while retaining the core values and ministry of the Presentation Order.

- Key circulation routes were identified through the site, some allowing universal public access through the site to the heritage centre, gardens and cemetery, others retaining private access to the residents of the convent and the community users of the main buildings. All had to be upgraded in order to meet modern standards of universal access in and some cases radical approaches were required to make the site accessible.
- The eighteenth century convent buildings on the site, forming the oldest continuously inhabited Irish convent, have been retained as residences for the Presentation Sisters. Existing accommodation was modified to allow for more independent living, while respecting the historic structures. The larger, communal areas of the convents (former dining rooms, community rooms, basement kitchens etc.) have been repurposed as multi-functional spaces used by a variety of community group activities which form the basis of the Sisters’ local ministry work, which meets the needs of disadvantaged groups in Cork not being met by other organisations in the city.
- The gardens and the Sisters’ burial ground (in which Nano Nagle is buried), an oasis in the city centre location to which the Sisters had traditionally allowed public access, was identified as being of particular significance and integral to the special character of the site. Historic features, such as the Novice’s Walk, were retained and a new café building, in the form of a garden pavilion, provide to the eastern end of the garden. A small, separate contemplative garden ensures the continued use of the gardens as a quiet contemplative space in a busy urban environment.
- The convent chapel, designed by George Goldie in the 1860s, was identified as the most suitable location for the Heritage Centre, which presents the history of 18th century Cork, the story of Nano Nagle, and the present work of the Presentation Order. The centre is open daily and is well used, particularly by school children. The chapel is used as a multi-purpose space hosting musical concerts, literary events, etc.
- A section of the historic building complex, to the south of the site, was chosen as a suitable location for a new archive facility, to house the archives of the Irish Congregation. This facility is now operational and is run by two full time archivists, one of whom is a Presentation Sister.
- The western end of the complex, occupied by surface car parking and 20th century buildings was identified as a potential location for a new development which would be essential to the economics of the overall site; both for its development and future

maintenance and support of the heritage and ministry functions of the historic area of the convent. Known as the Western Apex, a preferred use in the education field was identified for this area, in order to continue the tradition of the Presentation Order and to provide a use compatible with the other areas of the complex.

The development won the RIAI Architect Award for 2020 for the Urban Design and Master-planning for Nano Nagle Place. The Citation from the award Jury read: *‘The jury consider that ‘Nano Nagle Place’ is an exemplar urban renewal project demonstrating how large redundant building complexes can be sensitively transformed, with a varied mix of uses to create a very attractive destination that positively contributes to the surrounding area. The success of the completed project is on many levels, the sustainable reuse of historic buildings retaining their overall character and significance, the transmission of the sites values and the continuity of the memory of the original religious community, the re-organisation of private space to make it more accessible and to provide a contemporary meeting place and the considered and multi-layered professional approach and teamwork required for successful urban renewal and place-making of sensitive heritage’.*

- The Cork Migrant Centre supports the integration of immigrants in Ireland with a special focus on the empowerment of those at risk of poverty, social exclusion, exploitation and discrimination. Established by the Presentation Sisters in 2006, the Centre provides free, confidential and current information on access to services and immigration issues.
- Lantern has two main strands of work – community development and community education. All programmes are designed to be inclusive, accessible, relevant and most importantly – participant led. Time spent attending Lantern activities allows people to take small steps, make new connections whilst reflecting on what supports their well-being. Community education and creativity are the cornerstones of the centre focussing particularly on self-development, well-being and improving self-awareness. Lantern courses use a range of holistic approaches that aim to promote and enhance self-esteem and personal development.

I believe that the Nano Nagle Place, project, from a near derelict, but important strategic site for the city of Cork, to what it is today is an inspirational example demonstrating the effective management of the varied roles and responsibilities between the Public and Private sector. It was carried out to meet a shared Vision through which excellent conservation outcomes emerged in terms of sustaining the heritage tangible and intangible at its heart in a collaborative process that left nobody behind and created a very vital and dynamic<sup>36</sup> complex in the heart of Cork city.

***Authors Note:***

*I am most grateful to John Cahill, Assistant Principal Architect, OPW (rtd.) for his insight into public procurement contracts and to Gareth O’Callaghan JCA for providing me with information concerning the Nano Nagle Project.*

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<sup>36</sup> <https://nanonagleplace.ie>

## THE WAR WITH THE STONES – CONTROVERSIAL HERITAGE SITES IN ESTONIA: THE EFFICACY OF PUBLIC AND PRIVATE PARTNERSHIP (PPP) IN HERITAGE CONSERVATION

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Ave Paulus is president of ICOMOS Estonia, a member of ICOMOS International Scientific Committees on Cultural Landscapes and Legal and Administrative Issues, Rights-Based Approaches and Climate Change and Heritage working groups. She is an expert from Estonia in the European Union OMC Group on Strengthening Cultural Heritage Resilience for Climate Change. She has master's degrees from the Estonian Academy of Arts (heritage conservation and restoration) and Tartu University (semiotics and theory of culture). Her doctoral thesis deals with the heritage conservation model based on heritage community values and rights. She is a specialist for cultural heritage issues in the Environmental Board of Estonia.

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### Abstract:

The war of Russia against Ukraine has re-opened the discussion on Soviet memorials as a dissonant heritage. The paper presents the practice of protecting dissonant heritage in Estonia since the fall of the Soviet Union and the recent developments in the anti-statues movement. The political context has provoked several contradictions in the process of listing and delisting cultural heritage. The article is based on examples of Soviet architecture becoming listed, political statues and war graves under discussion and military heritage that is kept by locals.

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### Introduction

We know from all periods of history that political turns are accompanied by re-evaluation of heritage, especially the statues commemorating political leaders, victims or heroes of wars and political crimes. The war of Russia against Ukraine has re-opened the discussion on Soviet memorials. The paper presents the practice of protecting dissonant heritage in Estonia since the fall of the Soviet Union and the recent developments in the anti-statues movement. The political context has provoked several contradictions in the process of listing and delisting cultural heritage. The article is based on examples of Soviet architecture becoming listed, political statues and war graves under discussion and military heritage that is kept by locals. The article focuses on debates that are tender to political context and encourages continuous debate. The current paper focuses also on participatory heritage planning processes in Estonia, as described in Estonia's legislative framework and challenged in some conflicting heritage cases. Estonia has ratified the Faro convention and implemented participatory governance and management of heritage at state,

regional and local levels. Heritage is generally well protected at the state level, including UNESCO sites. The planning Act of Estonia is quite explicit in the processes of public participation and the procedures concerning overwhelming public interest in heritage.

The authors are convinced that Estonia has many examples of success stories of inclusive heritage protection. But when these participatory procedures are not followed correctly or are influenced by political interests, both legal and management problems arise and can lead to major conflicts. The participatory processes are especially challenged in the situation of crisis. The Russian war against Ukraine provoked debates and tensions on monuments from the Soviet era in all post-socialist countries. The political demand to remove ‘red monuments’ from the cityscape has revealed the need to discuss and solve the legal questions of ownership, legal protection, international agreements, and the division of the rights and duties of the state institutions and municipalities. Most of all the rights and involvement of communities. The debates are grounded with the European Parliament resolution from Sept. 19th 2019 on the importance of European remembrance for the future of Europe (2019/2819 (RSP)).<sup>1</sup> The resolution is deeply concerned about the efforts of the current Russian leadership to distort historical facts and whitewash crimes committed by the Soviet totalitarian regime and considers them a dangerous component of the information war waged against democratic Europe that aims to divide Europe, and therefore calls on the Commission to decisively counteract these efforts (p 17) and notes that the continued existence in public spaces in some member States of monuments and memorials (parks, squares, streets etc.) glorifying totalitarian regimes, which paves the way for the distortion of historical facts about the consequences of the Second World War and for the propagation of the totalitarian political system (p 18).

The authors’ arguments are supported by the concrete examples of the reconciliation of the dissonant Soviet heritage in the current political context. The first case analyses the protection of Soviet architecture and Stalinist heritage in Sillamäe. The second case study analyses the legal and historical clashes in the ongoing debates over the removal of soviet monuments. The third case study describes the heritage communities' initiatives in accessing and reconciling values of contested Cold War heritage – Suurpea Naval Base erected during Soviet Occupation and deportations on the coasts of Estonia.

## **Soviet Architecture**

The recognition of the best examples of art and architecture from the period of occupation as national heritage started relatively quickly after restoration of independence. The main focus has always been on a unique design by Estonian architects of the period of occupation. Many of them are in the cityscape, but even more unique architectural ensembles can be found in the former kolkhoz centres in the rural areas. However, several examples of canonic soviet architecture, especially wholesome complexes have been protected both on national (Conservation Act<sup>2</sup>) and

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<sup>1</sup> European Parliament resolution from Sept. 19th 2019 on the importance of European remembrance for the future of Europe (2019/2819(RSP)), link accessed 28.08.2022

[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2019/2819\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2019/2819(RSP))

<sup>2</sup> Conservation Act <https://www.riigiteataja.ee/en/eli/513122020003/consolide>

municipal (Planning Act<sup>3</sup>) level. They date mostly from the early post-war period 1940s-1950s or the 1960s.

Since the 2000s several artefacts from the period of occupation have been carefully restored, also on buildings in prominent places. This includes symbols like red stars, hammer and sickle, etc. The reasoning to preserve and even restore these symbols has been avoiding blank pages in history, to keep the memory of the difficult past alive. The tradition of soviets to destroy monuments to manipulate with history, has been taken as a substantive example not to follow. However, the heritage experts have never treated symbols of the occupation as a nostalgia, vice versa they are preserved to remind the difficult past. Of course, there have been attempts by pro-Russia groups to hijack these monuments for political manipulation, the best-known was the riots connected to the Bronze soldier in 2007.

One of the examples of listing dissonant heritage is the city of Sillamäe (Figure 1). The wholesome neoclassicist ensemble from Stalin’s era was built on the site of a former summer resort as a secret and closed city for processing Uranium and other precious metals used for military industry. The majority of inhabitants of the city were immigrants from other parts of the Soviet Union and one needed a special permit to enter the city. Sillamäe municipality recognized already in early 2000s the values of the exceptionally well-preserved structure and elements of a city planned in the period of 1940s-1950s and ordered environmental impact assessment including heritage impact assessment already in 2008<sup>4</sup> to validate the milieu protection area thematic plan in 2010 following the requirements of the Planning act to involve communities. The thematic plan<sup>5</sup> was followed by the initiative of the National Heritage Board to create a conservation area according to the Conservation act<sup>6</sup>. In the 1990s-2000s the Conservation Act and Planning Act were radically different – the first based on top down protection and the latter foresaw an inclusive process for protection. With recent amendments, the last ones dating from 2019, the National Heritage Board has also to follow the inclusive procedure of owners and publicity in validating restrictions in the conservation areas. The process of forming the conservation area was almost at its finish when the war broke out and listing architecture from the Stalinist period got a new meaning. The launch of the conservation area may be put on hold.

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<sup>3</sup> Planning Act <https://www.riigiteataja.ee/en/eli/515072022012/consolide>

<sup>4</sup> Sillamäe 1940.-1950. aastate miljööväärtuslike hoonestusalade teemaplaneeringu keskkonnamõju strateegilise hindamine

[https://www.sillamae.ee/documents/1122926/3642306/sillamae+miljoovaartuslike+hoonestusalade+tm+KSH\\_aruanne.pdf/e29c5f29-ff38-4a5d-a536-ebe697f0f23b](https://www.sillamae.ee/documents/1122926/3642306/sillamae+miljoovaartuslike+hoonestusalade+tm+KSH_aruanne.pdf/e29c5f29-ff38-4a5d-a536-ebe697f0f23b)

<sup>5</sup> Sillamäe miljööväärtuslike alade teemaplaneering

[https://www.sillamae.ee/documents/1122926/3642306/tp\\_sillamae\\_4\\_sissejuhatus\\_20101122.pdf/cbc5ed62-0d42-4005-92a3-63628f74b188](https://www.sillamae.ee/documents/1122926/3642306/tp_sillamae_4_sissejuhatus_20101122.pdf/cbc5ed62-0d42-4005-92a3-63628f74b188)

<sup>6</sup> Sillamäe muinsuskaitseala kaitsekorra koostamine

<https://www.muinsuskaitseamet.ee/et/ameti-tegevus/muinsuskaitsealade-kaitsekorralduskavade-koostamine/sillamae-muinsuskaitseala>



**Figure 1.** Sillamäe Stalinist City Centre, August 22, 2022. © Ave Paulus

### **Soviet Statues and War Memorials**

In Estonia the removal of the most prominent soviet statues from city scape started already during the Singing Revolution that provoked the fall of the Soviet Union. In the 1990s the list of protected monuments was revised and many monuments and artefacts justifying occupation were removed from the list. Many of them falsified history and had been listed mainly to achieve the demanded minimal number of monuments related to the history of Bolsheviks. However, the majority of statues were peacefully gathered to the museal environment and provided with interpretations. The biggest collection is in the Estonian History Museum outdoor exhibition.

The war graves that were not just decorated with Soviet symbols but had also been systematically used for propaganda events, were mostly left in peace. The exemption was the grave with the monument called Bronze soldier in the centre of the capital city, where pro-Russia groups organised annual provocative meetings. The removal of the human remains and the monument to a much more dignified site in the Defence Forces Cemetery caused severe riots in 2007. The conflict was predictable as the removal was made during the night. In fact, the Government consulted several authorities and communities including different religious confessions but the reasoning of the removal was not made clear to the Russian speaking community and the political provocateurs were not taken under control in advance. The process of the removal of the Russian tank-monument on August 16th 2022 from Narva was much less conflicting due to better and more open communication and preparations to guarantee public order. However, it provoked public discussions in the media and non-violent meetings at the site, for example bringing flowers (Figure 2).

Estonia has protected war graves as national monuments and since 2007, after ratifying the Geneva convention<sup>7</sup>, also by the War Graves Protection Act<sup>8</sup>. In the summer 2022 Estonian

<sup>7</sup> Protocol Additional to the Geneva Conventions of 12 August 1949  
[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34\\_AP-I-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34_AP-I-EN.pdf)

<sup>8</sup> Sõjahaudade kaitse seadus <https://www.riigiteataja.ee/akt/12777064>

Government started the campaign of removing Soviet symbols, including the war graves from the public space due to the Russian aggression against Ukraine.



**Figure 2.** Meetings around Narva tank. August 13, 2022 © Ülo Veldre, Wikimedia Commons

Although the political and moral context of the war of Russia against Ukraine justifies this ambition, there are numerous signs that some of the actions are manipulated due to the coming elections, as well by several development interests, and they undermine the activities of heritage protection from last decades safeguarding the traces of occupation for the common memory.

The National Heritage Board (NHB) published the draft to terminate the protection of war graves on July 13 2022.<sup>9</sup> NHB has stated that they want to terminate double protection as the graves are also protected under War Graves Protection Act. However, the protection level is not equivalent as the war graves act mostly deals with human remains, while NHB should be responsible for potential artistic value of the monuments as well as the potential significance as common memory sites. The contemporary international practice in dealing with dissonant heritage is not the demolition but the contextualisation of the monuments. Both ways need community involvement, but contextualising the statues glorifying communism as the memorials of the victims of communism is much more exhaustive for the politicians. It is much easier and visible just to demolish.

The clearly political bill of NHB includes a list of 275 monuments, consisting of 273 alleged war graves and burial sites and 2 art monuments. ICOMOS Estonia appealed to the NHB stating that

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<sup>9</sup> Sõjahaudade topeltkaitse lõpetamise eelnõu <https://www.muinsuskaitseamet.ee/et/sojahaudade-topeltkaitse-lopetamise-eelnou>

the process of terminating the protection of 275 monuments in a hurry, without appropriate analysis and explanations. The problem is that the list in its current form is unsubstantiated and the differences between the burial places and monuments included in it are not explained. There is no analysis of values and double protection in the draft. For example, the list includes several war graves and burial sites protected as monuments, which are already located in the historical cemetery protected as monuments and are indeed under double protection in the sense of the Conservation Act. However, there are also separate war graves and burial sites (soldiers and victims of several nations from both sides), which are currently protected as independent monuments and do not have double protection in the sense of the Conservation Act. The intended exclusion of these war graves and burial sites would end any state protection over them. Also left unaddressed is the future fate of monuments and plates removed from graves. The nature of the heritage would require complete documentation and recommendations for preserving the monuments in museums or similar places.

ICOMOS Estonia is not against the termination of the protection of majority of these monuments, but is of the opinion that the procedure for termination of protection must be carried out based on § 20 of the Civil Code and with relevant expertise on cultural and protection values and the possibility and appropriateness of its termination. Conservation Act § 20 provides the rules for ending and changing status as a monument and heritage conservation area. In the current situation the NHB follows the guidelines of the Government where a special committee is formed to discuss the removal of the traces of occupation. The information on the members and actions of the committee is classified. ICOMOS Estonia thinks that especially at the current moment, the topic of the monuments of occupation and the tragic legacy of World War II is very sensitive and requires a very correct and reasoned approach. Even during the ongoing war in the neighbouring country and potential military and political threat, these actions should be carried out openly and with maximum public involvement.

One of the sites that is publicly discussed is Maarjamäe memorial (Figure 3) in one of the most prominent locations in Tallinn. The obelisk to commemorate a battle of the WWI was commissioned by the Soviets already in 1950, it was followed by an extensive memorial complex that is decorated with rather universal symbols of peace and is considered one of the highlights of Estonian landscape architecture. However, the memorial has its dark sides - it was built over and thus destroying the German military cemetery and the grounds were used for Soviet propaganda events. After regaining independence, the German cemetery was restored to the extent possible and after serious debates over the location the memorial to the victims of communism was opened just next to the soviet memorial in 2018. The new memorial has been considered a good example of neutralising the aims of the soviet symbols. However, in recent months there have been fierce debates over the preservation of the soviet part of the monument. The authors of the memorial of the victims of communism have declared that they do not support the demolition, but are finding solutions on how to take its political message under control.



**Figure 3.** Memorial of Communist Victims (left) and Maarjamäe memorial © Robin Roots

### **Soviet Military Heritage - Reconciliation Case in Lahemaa NP**

In Estonia, several Soviet occupation period military heritage objects are under State level protection by the Conservation Act, especially several complexes in Estonian islands - Saaremaa and Hiiumaa. In 2018, an evaluation of military heritage was made<sup>10</sup> and 284 Soviet Occupation period military objects were described as having historical value. Most of them are not protected by the Conservation Act. On the Northern Coast of Estonia, in Lahemaa, they are protected by Nature Conservation Act<sup>11</sup> and respective Rules of Lahemaa National Park<sup>12</sup>. The involvement and role of local communities in defining Lahemaa National Park Soviet Occupation period military heritage in National Park Rules and Management Plan<sup>13</sup> is a success story of reconciliation. It is a remarkable area for several reasons: (1) NP was established in 1971 for the protection of nature and culture, national identity, at the same time military bases on the coasts of Lahemaa were inaccessible and non-existent for third parties; (2) 36 Lahemaa coastal villages were in a closed border zone during the Soviet Union occupation and military presence was felt there in every aspect of daily life ; (3) during last decades local communities have been involved

<sup>10</sup> Estonian Heritage Society 2018. Eesti Muinsuskaitse Selts 2018. Military Heritage inventory. Uuringu „Eesti sõjaajaloolise arhitektuuripärandi kaardistamine ja kasutusvõimaluste analüüs. 19. ja 20. sajand“ lõpparuanne <https://register.muinas.ee/file/militaryheritagegeneral/47.pdf>

<sup>11</sup> Nature Conservation Act declares the objectives of the conservation of National Parks to be the protection of intangible and tangible cultural heritage, cultural landscapes and cultural spaces of certain typical landscapes (Art 26(1)). There are 6 national parks in Estonia. Link <https://www.riigiteataja.ee/en/eli/513072022001/consolide>

<sup>12</sup> Lahemaa National Park Protection Rules 2015. (Lahemaa rahvusparki kaitse-eeskiri). Entry into force: 8.03.2015. Available at <https://www.riigiteataja.ee/akt/126022015033>

<sup>13</sup> Lahemaa National Park Management Plan 2016 (Lahemaa rahvusparki kaitsekorralduskava 2016-2025). Koostajad Imbi Mets, Ave Paulus jt. keskkonnaamet, 2015, pp. 187-189. Available at <https://kaitsealad.ee/et/kaitsealad/lahemaa-rahvuspark/kaitsealast-5/kaitsekorralduskava> (17.08.2022)

in defining their heritage values and protection regime, military heritage is one of the most challenging topics; (4) Lahemaa managing body is Cooperation Council<sup>14</sup>, where all right-holders and stakeholders are present to balance rights and responsibilities. Rights-holders in military heritage are diverse.

The first national park in the former Soviet Union, 50 years old national park has abundant numbers of military heritage of the 20th century. On the 145 kilometres of the Lahemaa coastline, there are thousands of locals and hundreds of traces of Cold War presence. The most magnificent object of the Cold War military heritage of Estonia is undoubtedly the Suurpea Naval Base in and around Hara bay (1946 -1993). After the base was closed in 1993, the buildings remained in place, but the equipment and most of the people were transferred to the new research and testing base of the Russian Navy near Vyborg. The central polygon of the base was Hara Bay itself with permanent stands, in which the physical fields of approximately 1000 ships (including submarines) were studied and demagnetised, including stands and buildings in Hara port. The base also had the Suurpea barracks town and a residential town with families for the Marines. In 1993, military bases were abandoned by the Soviet Army and deliberately forgotten by the Estonian State, although hundreds of inhabitants of these areas stayed in Estonia. These traces were the “ghosts” of the nation's tragedy after WWII, when local traditions were marginalised, people were deported to Siberia, and military areas formed. Soviet deportations were stated by the Parliament of Estonia as a crime against humanity and acknowledged as such by the European Court of Human Rights.<sup>15</sup>

The Lahemaa NP Rules (2015) and Management Plan 2016-2025 were drafted together with local communities (5 years, more than 50 meetings, approximately 600 proposals). Military heritage was the most controversial issue. Among local communities, experts and managers, there was an intense debate about the values and fate of Soviet Occupation military heritage. In 2006, at the beginning of the process of evaluation, locals wanted to demolish “these wounds in their hearts” or neglect their historical value. By 2015, after long and fruitful debates and discussions, activities and research, it was unanimously stated that the surviving traces of Soviet Occupation military heritage deserve protection, raising awareness, exhibition and civilian use, and the selection of the best of them for state-level conservation. Among them Suurpea Naval Base.

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<sup>14</sup> Lahemaa NP heritage management body is the Cooperation Council, which consists of all rights-holders and duty-bearers and voluntary stakeholders and experts. The local communities of Lahemaa NP (approximately 10,000 landowners and local inhabitants) are represented there by regional groups and village elders. The Cooperation Council is organising cultural heritage management. Statute - Lahemaa rahvusparki koostöökogu statuut (Statute of Cooperation Council of Lahemaa National Park). Lahemaa National Park Cooperation Council Statute (2011). Lahemaa rahvusparki koostöökogu statuut, kinnitatud keskkonnaameti peadirektori 16.11.2011 käskkirjaga nr 1-4.1/11/424. Available at <https://kaitsealad.ee/et/kaitsealad/lahemaa-rahvuspark/kohalikule/lahemaa-rahvusparki-koostookogu> (13.08.2022).

<sup>15</sup> Full text of European Court of Human Rights Decision on the case Kolk and Kislyiy v. Estonia: Non-Applicability of Statutory Limitations to Crimes against Humanity, retrievable <http://www.derechos.org/nizkor/impu/kolk.html>



**Figure 4.** Collaborative Workshop and seminars in Hara Port in 2020. Former Soviet diver Aleksandr Zaitsev (in the middle) discusses the details of demagnetization, while students are conserving Soviet Soldier depiction (in the back). © *Toomas Tuul*

The Cold War objects are now in progress to be “domesticated” and „neutralised”<sup>16</sup>. In recent years, local villagers have successfully “tamed” such heritage on coastlines. “Make love, not war” should be the title of that paradigm change - they are coloured with flowers by villagers or covered with guerrilla art of unknown famous artists. During several workshops held together with all involved parties (Figure 4), guerrilla restoration, seminars, wall-climbing events, art events and architectural think-tanks were held, memories collected, and futures drafted<sup>17</sup>. During the last decade, controversial hotspots of Cold War military heritage on the coastline of Lahemaa have become lively again because of its location<sup>18</sup>, but as well due to change in attitudes towards this heritage<sup>19</sup>. Conflicting and opposing communities have united in mutually co-beneficial ways. The primarily Russian-speaking families of former Russian Army and Institute workers still live

<sup>16</sup> This change of discourse has been elaborated in Paulus, Ave (2020). Translating Controversial Heritage into Creative Futures. ACHS 2020: Futures, the fifth biennial conference of the Association of Critical Heritage Studies, University College London, UK, 26.-30.08.2020. University College London, UK, 50 [https://www.ucl.ac.uk/archaeology/sites/archaeology/files/achs\\_2020\\_book\\_of\\_abstracts\\_reduced.pdf](https://www.ucl.ac.uk/archaeology/sites/archaeology/files/achs_2020_book_of_abstracts_reduced.pdf)

<sup>17</sup> More on that theme Paulus 2020, Lahemaa and Alutaguse military heritage days. Lahemaa ja Alutaguse rahvusparki militaarparandi päevad. In Muinsuskaitse aastaraamat 2020. Link [https://www.muinsuskaitseamet.ee/sites/default/files/content-editors/trykised/muinsuskaitse\\_aastaraamat\\_2020\\_web.pdf](https://www.muinsuskaitseamet.ee/sites/default/files/content-editors/trykised/muinsuskaitse_aastaraamat_2020_web.pdf)

<sup>18</sup> For the property owners, the existence of these buildings is the existence of building rights. According to the Lahemaa NP protection Rules pg 23(1)1, you cannot build new residential buildings on the coastline. Link 08.08.2022 <https://www.riigiteataja.ee/akt/126022015033>

<sup>19</sup> The local newspaper "Sõnumitooja" has a record of community-led events, like 2020 activities in <https://sonumitooja.ee/militaarparand-suurpeal-ja-mujal-hara-lahe-aares/> or <https://sonumitooja.ee/kultuuriparand-hoiab-meid-koos/>

in the Suurpea complex and surroundings. The new ways of rendering the Cold War heritage have given back the voice to those communities. They were active both in planning management and regulations, and rendering histories and memories of the area. One example of collaboration of preserving military heritage is the workshop in collaboration of Estonian Academy of Arts, Environmental Board of Estonia, locals and landowner called “Abandoned Landscapes - Hot Military Heritage of Cold War”, where students of architecture and restoration looked together with local communities for environmentally friendly new uses and reuses of abandoned military landscapes and buildings<sup>20</sup>. Besides dealing with tangible heritage, local communities in collaboration with academic institutions started to collect in 2018 intangible aspects of landscapes - memories of Cold War Heritage<sup>21</sup>. Now, due to the Russian invasion of Ukraine, the Russian-speaking population of these villages is divided and collecting memories on these concrete Cold War monuments is stopped. Estonians feel the old wounds reconciled are now fresh.

## **Conclusion**

The examples show that the evaluation of the dissonant heritage is very sensitive. The sites under discussion are "ghosts" of the tragedies of the past century. Among heritage communities, states and experts, there are intense debates about the values and fate of those areas. Besides several historical, political and socio-economic issues, personal wounds were and are reconciled. These cases highlight the importance of including heritage communities while dealing with conflicting histories, reconciliation, restitution, and dignity of heritage and communities concerned.

It is of utmost necessity to find the balance in preserving these sites as artefacts and reminders of common memory and at the same time to cleanse them from soviet provocation. The total removal of the monuments from public space as a part of a campaign creates a blank page in the history for the future generations. Dissonant heritage is a reminder of human values, and the debates over dissonance are a tool to find common values of the communities.

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<sup>20</sup> More on that <https://www.artun.ee/kalender/huljatud-maastikud-suurpea-ja-parispea-kulma-soja-kuum-kinnisvara/>

<sup>21</sup> Link to the web-page of “Cold War Coasts” <https://coldwarcoasts.org>

## SYMPOSIUM THEME

### "The Efficacy of Public and Private Partnerships in Heritage Conservation"

The discussions about how to strengthen heritage management systems through different collaboration and participation models are occupying a considerable space in theory and practice today. We are witnessing more collaborations, for example, between public and private entities, at different scales and purposes. The effective use of monetary resources, diversification of financial tools; making the best use of capacities, taking the advantage of private sector flexibility, etc. can be counted as some of primary motivations behind while the analysis of their effectiveness remained limited so far.

This symposium aims to share the practices of different countries in the field of public-private partnerships in heritage conservation, to create an international platform to discuss the pros and cons of different partnership models, and also to determine the ways and strategies as to how to develop such collaborations to serve the effective management of heritage protection practices.

Symposium sessions are organized according to the selected papers presented under the following headings:

- **Theoretical framework, socio-political strands for public-private partnerships**  
Both parties' expectations from and main motivations towards partnerships; the relation to state administration theories (localization, governance, public entrepreneurship etc.);
- **The role of World Heritage mechanisms in encouraging public-private partnerships**  
Related provisions in the convention and different doctrinal texts and guidelines; appropriate mechanisms to benefit within partnerships (historic urban landscape approach, management planning, heritage impact assessment etc.); ICOMOS evaluations on such collaborations in the state of conservation and nomination reports;
- **Legal regulations for public-private partnerships**  
Relevant legislative tools and provisions; state incentives supporting partnerships; bureaucratic or other limitations obstructing partnerships; monitoring mechanisms; discrepancies between national and international legislations;
- **Ways and methods for public-private partnerships**  
Ad-hoc or legalized administrative mechanisms; partnership shares and responsibilities; authority transfer mechanisms; institutional and individual responsibilities; partnerships at different spatial scales (international, national, regional, level); problems encountered in implementation
- **Scopes and purpose of public-private partnerships**  
Examples of partnerships for different purposes (excavation, restoration, exhibition, management, etc.);
- **Results of public-private partnerships**  
Managing and sharing the rents generated through investments; conflicts in value-led strategic management of heritage properties; quality of the impact and result; managing the change in socio-cultural environment; critiques to partnerships;

## **SYMPOSIUM PROGRAM**

### **16 October 2022 – Sunday: Welcoming**

Venue: 100<sup>th</sup> Anniversary of Liberty Commemoration House (Alanyalı Mansion)

- 19.00-19.30 Opening Speeches  
Tamer Gök – ICLAFI Türkiye  
Mona O'Rourke – ICLAFI President  
Burçin Altınsay Özgüner – ICOMOS Türkiye  
Tunç Soyer – İzmir Metropolitan Municipality
- 19.30-19.45 Presentation on Historical Port City of İzmir
- 19.45-20.00 Presentation on World Heritage Volunteers Program

### **17 October 2022 – Monday: Meeting**

Venue: EGIAD Social and Cultural Events Centers, İzmir

- 08.30-09.00 Registration
- 09.00-10.30 Session I – Keynote speeches
- 10.30-10.45 Coffee Break
- 10.45-12.15 Session II – Legal Regulations for PPPs
- 12.30-13.30 Lunch
- 13.30-15.00 Session III – Ways and Methods for PPPs
- 15.00-18.30 Guided Walking Tour: İzmir Historic District

### **18 October 2022 – Tuesday: Meeting**

Venue: EGIAD Social and Cultural Events Centers, İzmir

- 09.00-10.30 Session IV – Scopes and Purposes for PPPs
- 10.30-10.45 Coffee Break
- 10.45-12.00 Session V – Results of PPPs
- 12.00-13.30 Lunch
- 13.30-15.00 Session VI – Panel Discussion
- 15.00-17.00 ICLAFI Annual Meeting
- 17.00-19.00 Guided Tour to Gediz Wetland

## SESSIONS

### **Session I – Keynote Speeches**

**09.00-10.30**

Chair: Tamer GÖK

Public and Private Partnerships from Public Administration Perspective

H. Tarık ŞENGÜL

Public and Private Partnerships in Heritage Conservation

Evrim ULUSAN

TARKEM as a Model for Public and Private Partnership in Heritage Conservation

Sergenç İNELER

### **Session II – Legal Regulations for PPPs**

**10.45-12.15**

Chair: Gideon Koren

Public-Private Partnership and Protection of Russia's Heritage

Nikolay Lavrentyev &amp; Andrey Garevsky

Public and Private Partnership in Heritage Conservation: The Case of Poland

Wojciech Kowalski

Legal Regulation in Turkey for Endorsing Public and Private Partnerships in  
Heritage Conservation

Yasemin Sarıkaya Levent &amp; Evrim Ulsan

How can the PPP Model Be of Use in Dealing with Regulative Issues?

Terje Nypan

### **Session III -- Ways and Methods for PPPs**

**13.30-15.00**

Chair: Riin Alatalu

The German Foundation for Monument Protection: A Successful Public-Private Partnership

Werner von Trützscher

Citizens' Portal and Volunteering – Possibilities for Involving Civic Engagement in  
Bavarian Heritage Conservation

Wolfgang Karl Göhner

Public and Private Partnership in Municipal Conservation Planning and Management

The Jerusalem Community Councils as a model for Public and Private Partnership

Gideon Koren

The Efficacy of Public and Private Partnership in Heritage Conservation:

Two Examples from Sweden

Thomas Adlercreutz

**Session IV -- Scopes and Purposes for PPPs**

**09.00-10.30**

Chair: Wojciech Kowalski

The Concept of Public and Private Partnerships in Belgium, The Flemish Region:

Exploring the Horizon

Anne Mie Draye

Scopes and Purpose of Public and Private Partnerships for Historical and  
Archaeological Sites in the Philippines

Kathleen Tantuico & Lucille Kay Malilong-Isberto

The Development of Urban Areas by Competition: The Cases in Helsinki

Matleena Haapala

Sustainable Tourism in Historic Port Cities: Potentials for Public- Private  
Partnerships in the Red Sea Region

Mohamad Waheed Fareed Abdelfattah & Mirna Khater

**Session V -- Results of PPPs**

**10.45-12.00**

Chair: Werner von Trützscher

Public-Private Partnerships in Cultural Heritage: Slovenian Experience

Borut Santej

Benefits and Challenges to the Use of Public and Private Partnership in Cultural  
Heritage Conservation in Ireland

Mona O'Rourke

The War with the Stones - Controversial Heritage Sites in Estonia

Ave Paulus & Riin Alatalu

**Session VI – Panel Discussion**

**13.30-15.00**

Chair: Mona O'Rourke

Reporters: Yasemin Sarıkaya Levent & Evrim Uluşan

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## ICOMOS - ICLAFI IZMIR SYMPOSIUM

17-18 OCTOBER 2022

### ICLAFI CONCLUDING STATEMENT

#### On PRESERVING THE CULTURAL HERITAGE OF IZMIR, Turkey.

**It is acknowledged with gratitude following our annual meeting in Izmir in October 2022 that;**

1. Izmir is the country's third-largest metropolitan city, which contains the traces of civilizations it has witnessed over its 8500-year uninterrupted settlement history. The Izmir Metropolitan Municipality is working with Government and other stakeholders including local communities to preserve its tangible and intangible cultural heritage and to invest in building capacities for this purpose, including provision of significant financial support for excavation and research activities at archaeological sites.
2. Significant steps are being taken to protect and manage cultural heritage sites that have been inscribed onto the UNESCO World Heritage List, as well as for those that may have potential Outstanding Universal Value but have not yet been included in the Tentative List for World Heritage in accordance with the World Heritage Convention 1972, or the Operational Guidelines associated with that Convention.
3. Central and local government institutions, universities, professional associations, non-governmental organizations, and the communities associated with their cultural heritage all have a participative role to play in the protection and management of cultural heritage, and the authorities place a notable emphasis on their involvement in these processes.
4. It was a great privilege for the members of ICLAFI who attended the meeting in Izmir to learn about The TARKEM model. This has been a successful public-private partnership model in that it conducts its decision-making and monitoring processes in a transparent and participatory manner, and maintains a balanced representation of the public sector, private sector, and civil society, and attempts to develop the society's economic, social, and cultural relations with the historical city centre without altering its ownership structure,
5. This culture of cooperation assists in the protection and management of Izmir's multi-cultural and multi-layered landscape so that it is safeguarded for future generations.

#### **ICLAFI notes that;**

6. The protection of Cultural heritage is a shared responsibility between State, Local Authorities and other stakeholders including local communities. It is valuable to form partnerships on the basis of solidarity, and cultural heritage should be integrated into social and cultural life in order to ensure its survival and to strengthen its ties with society, thereby preserving the spirit of the place.

7. The model for project partnerships that may be formed along the axis of the public sector, the private sector, and civil society is to be accountable, responsible, and to have transparent structures that are open to public scrutiny. It is desirable to prioritise public and social benefits, maintain a balance between protection and use, and include economic, social, and environmental dimensions as complementary elements to physical protection. To this end, it is essential that the local community would always be a fundamental component within these partnerships.
8. The sharing of resources, risks, and responsibilities between partners is best defined in accordance with their respective capacities, while duties and responsibilities should be defined and clarified in accordance with legal and regulatory requirements; environments for information and experience exchange, as well as the inclusion of technical and financial monitoring mechanisms, into the processes to provide public transparency.
9. It is desirable to consider the development of new investment opportunities that will facilitate the growth of creative economies and cultural industries while transferring as many benefits as possible from partnership-based projects to the public.

**We would encourage national and local authorities;**

10. To continue their important role in protecting and promoting cultural heritage and to maintain coordination with district municipalities and other institutions,
11. To maintain the effective use of funding from central and local government and to monitor national and international opportunities/project calls routinely by a team in order to secure new financial resources,
12. To diversify the financial resources allocated to heritage conservation, to create new financial resources, including the development of public-private partnerships, and to provide incentives that will encourage the private sector to make greater use of its financial and technical capacities,
13. To promote widely the financial resources allocated for protection as well as the opportunities for public-private sector partnership in order to increase the level of knowledge and awareness in the sector and society; thereby increasing the number and variety of applications for financial resources and collaborations,
14. To develop implementation tools in accordance with the "Circular Culture" philosophy, which was presented at the 4<sup>th</sup> UCLG Culture Summit held in Izmir in 2021 with the intention of establishing a future in harmony with nature, the past, each other, and change,
15. To pay special attention to the preservation of the ownership pattern during conservation activities in historical city centres; to develop systematic and regular monitoring strategies and tools to ensure that conservation, restoration, and re-use activities strengthen the spatial, social, and economic structure of the region without negatively impacting the living conditions of the local population,
16. To conduct heritage impact assessments before and after project implementations in order to monitor and manage the effects of conservation and re-use projects on the heritage, the environment, and the social and economic structure; to implement legal and binding regulations to ensure more effective implementation of these tools within the system,

- 17.** To preserve the authenticity and integrity of structures and their context in re-use projects by ensuring that the proposed new functions are compatible with their carrying capacities and take into account the protection-use balance,
- 18.** To conduct special studies to strengthen the social ties to the heritage site, to create new experience environments, and to attract the attention of younger generations in particular to the heritage sites,
- 19.** To ensure the effective implementation of management plans prepared for cultural heritage sites, to continue and expand the existing dialogue between site managers responsible for their implementation, and to prepare heritage management plans on a participatory and integrated basis for heritage sites without a management plan, and to make legal arrangements to strengthen the technical, financial, and administrative capacities and powers of management plans and site management in order to improve their heritage management effectiveness,
- 20.** To ensure harmony and integration between upper-scale spatial strategies/plans and heritage management plans; to implement intervention decisions in accordance with these harmonized strategies and plans,
- 21.** To benefit from universities as basic laboratory environments for these partnerships with a focus on science, research, and innovation; to open the fields where scientists affiliated with these institutions will conduct fieldwork, and to put their findings and recommendations into action through future collaborations.

## ICOMOS - ICLAFI İZMİR SEMPOZYUMU 17-18 EKİM 2022

### İZMİR KÜLTÜR MİRASININ KORUNMASINA İLİŞKİN ICLAFI NİHAİ BEYANI

Ekim 2022’de gerçekleşen yıllık toplantımızı takiben aşağıdaki hususlar memnuniyetle takdir edilmektedir:

1. İzmir 8500 yıllık kesintisiz yerleşim tarihi boyunca tanıklığını üstlendiği medeniyetlerin izlerini barındıran bugün Türkiye’nin en büyük üçüncü kenti konumunda olan bir metropoldür. İzmir Büyükşehir Belediyesi, somut ve somut olmayan kültürel mirasın korunması ve bu amaçla, arkeolojik alanlardaki kazı ve araştırma faaliyetleri için önemli mali destek sağlanması da dahil olmak üzere, kapasite oluşturmaya yatırım yapmak için Hükümet ve yerel topluluklar dahil diğer paydaşlarla birlikte çalışmaktadır.
2. UNESCO Dünya Mirası Listesi’ne alınmış kültürel miras alanlarının yanı sıra İstisnai Evrensel Değer potansiyeline sahip olabilecek ancak henüz Dünya Mirası Geçici Listesi’ne alınmamış kültürel miras alanlarının 1972 Dünya Mirası Sözleşmesine veya Uygulama Rehberi’ne uygun olarak korunması ve yönetilmesi için önemli adımlar atılmaktadır.
3. Merkezi ve yerel yönetim kurumları, üniversiteler, meslek kuruluşları, sivil toplum kuruluşları ve kültürel miraslarıyla ilişkili toplulukların tümü, kültürel mirasın korunması ve yönetiminde katılımcı bir role sahiptir ve yetkililer, bu süreçlere katılımlarına kayda değer bir vurgu yapmaktadır.
4. İzmir’deki toplantıya katılan ICLAFI üyeleri için TARKEM modelini öğrenmek büyük bir ayrıcalıktı. Kamu, özel sektör ve sivil toplum ekseninde dengeli bir temsiliyeti gözeterek karar alma ve izleme süreçlerini şeffaf ve katılımcı şekilde yürüten, toplumun tarihi kent merkezi ile ekonomik, sosyal, kültürel ilişkilerini mülkiyet yapısını büyük ölçüde değiştirmeden geliştirmeye çalışan TARKEM modeli başarılı bir kamu - özel sektör iş birliği modelidir.
5. Bu iş birliği kültürü, İzmir’in çok kültürlü ve çok katmanlı peyzajının gelecek nesillere aktarılabilmesi için korunmasına ve yönetilmesine katkı sağlayacaktır.

#### ICLAFI ayrıca aşağıdaki hususları not etmektedir:

6. Kültürel mirasın korunması Devlet, yerel yönetimler ve yerel topluluklar dahil diğer paydaşlar arasında paylaşılan bir sorumluluktur. Dayanışma temelinde ortaklıklar oluşturmak değerlidir ve kültürel miraslar yaşatılarak toplumla bağları güçlendirilmeli, böylece yerin ruhunun korunması için sosyal ve kültürel yaşama entegre edilmelidir.
7. Kamu - özel sektör - sivil toplum üçgeninde geliştirilecek proje ortaklıkları hesap verebilir, sorumlu, şeffaf ve denetime açık yapılar olmalıdır. Kamusal ve toplumsal faydanın ön planda tutulması, koruma-kullanma dengesinin gözetilmesi, ekonomik, toplumsal ve çevresel boyutların fiziksel korumaya tamamlayıcı unsurlar olarak dahil edilmesi arzu edilir. Bu amaçla, toplumun her daim asli unsur olarak bu ortaklıklara dahil edilmesi önemlidir.

8. Ortaklar arasındaki kaynakların, risklerin ve sorumlulukların paylaşımı ilgili kapasiteler ile görev ve sorumluluklar ise yasal ve düzenleyici kurallar ile uyumlu olarak en iyi şekilde tanımlanmalı ve açıklığa kavuşturulmalıdır. Bilgi ve deneyim aktarımının sağlanacağı ortamlar ve kamuoyu şeffaflığının sağlanabileceği teknik ve mali izleme mekanizmaları sürece dahil edilmelidir.
9. Ortaklık temelli yürütülen projeler mümkün olduğu kadar çok faydayı kamuya aktarırken yaratıcı ekonomilerin ve kültür endüstrilerinin gelişimine olanak tanıyacak yeni yatırım fırsatlarının geliştirilmesi arzu edilmektedir.

#### **Ulusal ve yerel idareleri aşağıdaki hususlarda teşvik ediyoruz:**

10. Kültürel mirasın korunması ve tanıtılmasındaki önemli rollerini sürdürmek ve ilçe belediyeleri ve diğer kurumlarla koordinasyonu sağlamak,
11. Merkezi ve yerel yönetim fonlarının etkin kullanımını sağlamak ve yeni finansal kaynaklar sağlamak için ulusal ve uluslararası fırsatları/proje çağrılarını bir ekip tarafından rutin olarak izlemek,
12. Mirasın korunmasına ayrılan mali kaynakları çeşitlendirmek, kamu-özel sektör ortaklıklarının geliştirilmesi de dahil olmak üzere yeni mali kaynaklar yaratmak ve özel sektörü mali ve teknik kapasitelerini daha fazla kullanmaya teşvik edecek teşvikler sağlamak,
13. Sektörde ve toplumda bilgi ve bilinç düzeyini artırmak amacıyla korumaya ayrılan mali kaynakları ve kamu-özel sektör iş birliği olanaklarını geniş çevrelere tanıtmak; böylece finansal kaynaklar ve iş birlikleri için başvuruların sayısını ve çeşitliliğini artırmak,
14. 2021 yılında İzmir'de düzenlenen 4. UCLG Kültür Zirvesi'nde doğayla, geçmişle, birbiriyle ve değişimle uyum içinde bir geleceğin kurulması amacıyla sunulan "Döngüsel Kültür" felsefesine uygun uygulama araçları geliştirmek,
15. Tarihi kent merkezlerindeki koruma çalışmalarında mülkiyet örüntüsünün korunmasına özel önem vermek; koruma, restorasyon ve yeniden işlevlendirme faaliyetlerinin yerel halkın yaşam koşullarını olumsuz etkilemeden bölgenin mekânsal, sosyal ve ekonomik yapısını güçlendirmesini sağlamak için sistematik ve düzenli izlemeler yapmak, bu amaçla stratejiler ve izleme araçları geliştirmek,
16. Koruma ve yeniden işlevlendirme projelerinin miras, çevre, sosyal ve ekonomik yapı üzerindeki etkilerini izlemek ve yönetmek amacıyla proje uygulamalarından önce ve sonra miras etki değerlendirmeleri yapmak; bu araçların sistem içerisinde daha etkin uygulanmasını sağlamak için yasal ve bağlayıcı düzenlemeleri hayata geçirmek,
17. Yeniden işlevlendirme projelerinde, önerilen yeni fonksiyonların taşıma kapasitelerine uygun olmasını sağlamak ve koruma-kullanma dengesini gözeterek yapıların özgünlüğünü, bütünlüğünü ve bağlamını korumak,
18. Miras alanıyla olan sosyal bağları güçlendirmek, yeni deneyim ortamları oluşturmak ve özellikle genç kuşakların ilgisini miras alanlarına çekmek için özel çalışmalar yapmak,
19. Kültürel miras alanları için hazırlanan yönetim planlarının etkin uygulanmasını sağlamak, uygulama koordinasyonundan sorumlu alan başkanları arasındaki mevcut diyalogu geliştirerek devam ettirmek, henüz yönetim planı bulunmayan miras alanları için katılımcı

ve bütünlük temelinde miras yönetim planlarını hazırlamak ve yönetim planlarının ve alan başkanlıklarının miras yönetiminde etkin hale getirilebilmeleri için teknik, mali ve idari kapasitelerini ve yetkilerini güçlendirecek yasal düzenlemeler yapmak,

20. Üst ölçek mekânsal strateji ve planlar ile miras yönetim planları arasındaki uyum ve entegrasyonu sağlamak, müdahale kararlarını bu uyumlaştırılmış strateji ve planlara uygun olarak uygulamak,
21. Bilim, araştırma ve yenilik odaklı bu ortaklıklar için temel laboratuvar ortamları olarak üniversitelerden yararlanmak; bu kurumlara bağlı bilim insanlarının saha çalışması yapacakları alanları açmak ve gelecek iş birlikleriyle bulgu ve önerilerini hayata geçirmek.

## SYMPOSIUM PHOTOS



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