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Tools for Safeguarding Protection Standards**



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Editors: Marko Stokin, Sonja Ifko

Design: Sonja Ifko

Layout and preprint: Januš Jerončič

English translations: Amidas, d.o.o. (page 3 to page 5), Luka Kocbek (page 23 to page 37),
Arienne Free (page 39 to page 47) and Mojca Vilfan (page 49 to page 65)

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1. Stokin, Marko
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Contents

Editorial of ICOMOS Slovenia.....	3
Reviews.....	5
Robert Pickard Funding, Skills, Integrated Conservation and Enforcement for Heritage Protection in a Period of Economic Recession	7
Jelka Pirkovič, Vlasta Vodeb Heritage Management through Planning and Information Tools	23
Daniela Tomšič The Conservation Scheme as a Legislative Guarantee for Equal Treatment of the Cultural Heritage Protection in Spatial Interventions	33
Mitja Guštin, Savin Jogan The Fate of Cultural Monuments. The Gap Between what is Decreed and what is Put into Effect	39
Sonja Ifko Heritage of Socialist Industrialisation in the Time of Crisis – Torn between Development and Preservation	49
Ilka Čerpes Vision and Reality: Evolution of the Winning Competition Entry for the New Town Hall Complex in Ljubljana	59
Mojca Marjana Kovač Deficiencies in Legislation on Cultural Heritage Protection in Local Communities	67
Mikhael de Thyse International Symposium On Cultural Heritage And Legal Issues Bled (Slovenia), 2-4 May 2013: Conclusions.....	74
Index.....	77

The Fate Of Cultural Monuments The Gap Between What Is Decreed And What Is Put Into Effect

Abstract

On the basis of some concrete examples of (non)expert solutions this article discusses some cases of good practice such as the transfer of the monument from state to local ownership and its continued management within the protection standards, as well as examples of inadequate practice, which are the consequences of non-compliance of administrative and professional services or poor decisions and irresponsibility of owners.

Special emphasis is given to the authors' presentation of the legislation in specific cases, which are our particular interest since they provide public responsibility and demonstrate the required efficiency in the protection of monuments.

In turbulent periods in our country we have sometimes lost the sense of care for public propriety and we were, and in some cases still are, unable to implement basic maintenance for our public goods, including monuments. The use of the adjective "turbulent" does not solely apply to the physical destruction resulting from wars, floods, and earthquakes, but also to the migrations of people, extreme changes in social systems and the nationalization/denationalization of the property concerned.¹

I Cultural heritage protection in Slovenia: historical roots, development, regulation & practice

The Slovenian territory has been connected with its neighboring countries throughout its history, which is also the case in the field of cultural property. This particularly refers to the relations with Italy, Germany, and Austria, with Czech Republic in some periods, and more recently also with Croatia and the other territories of the former Yugoslav State. The endeavors and activities mentioned in this framework were not all equally intensive, nor were they productive in all the areas treated within this framework. There are considerable differences between them, but in the initial period the relations and regulations inside the Austro-Hungarian Empire were the most important for the development of systematic endeavors in the field of cultural property protection (CPP).

I Historical survey

Austria (Austro-Hungarian Empire) from the mid-18th century until 1918

In Austria itself and in the Austro-Hungarian Empire, which included regions of modern-day Slovenia (Carniola, Styria, Carinthia, Gorizia, and parts of Trieste and Istria), the legal regulation of Cultural Property Protection began relatively early.²

The first act in this framework was the decree concerning the protection of archival material (manuscripts, correspondence, and plans) in 1749. Later (1782) the Court Office protected all coin hoards and antiquities with one special decree, and other objects found in the earth (arms, sculptures, stone reliefs etc.) with a second decree, while the finder only had to inform the aforementioned Office about the heavy finds (stone inscriptions, statues). The de-

¹ Jogan, Savin, *Pravno varstvo dediščine*. Koper 2008; Guštin, Mitja. Protecting natural and cultural environments in southeastern Europe. Mader, S. (ur.). Proceedings of the International congress catastrophes and catastrophe management in museums: Sarajevo, 17-21 April 2001. Sarajevo: Zemaljski muzej Bosne i Hercegovine; Innsbruck: Tiroler Landesmuseum Ferdinandeum, 2004, str. 68-75; Boylan P.J., *Review of the Convention for the Protection of the Cultural Property in the Event of Armed Conflict*. Paris 1993, 6.

² Pirkovič, Jelka, *Osnovni pojmi in zasnova spomeniškega varstva v Sloveniji*. Zavod za varstvo naravne in kulturne dediščine. Ljubljana 1993.

cree of 1818 prohibited the export of cultural monuments and objects, which contribute to the respect and splendor of the State. Two decrees in 1828 required the notification of the State about the planned export of cultural property and about the immuration of ancient stones in the walls nearby churches. This was the atmosphere when, in December 1850, the emperor issued the decree on the establishment of the Central Commission for the investigation and conservation of monuments and buildings, which became the basic body of the CPP for the entire State.

In the later decentralization of the Central Commission, the most important members gradually became the conservators and correspondents in individual countries (regions). During the Commission's reorganization in 1873, the collaboration between the Central Commission and regional governments and agencies was strengthened and during its last reorganization (in 1911) it was completely transformed into a council for monuments and a monuments office as an administrative agency, giving essential importance to the regional conservators.

The collection of epigraphic finds and a broader interest in antiquity began in the Slovenian territory quite early under the strong influence of the aforementioned normative solutions. Consequently the first professional societies concerned with cultural heritage were founded in the first half of the 19th century.

Later, as a result of the abolition of the obligatory offering of cultural objects to the court cabinet, or their purchase by the court cabinet, some regional museums were established. Among others these included the museums in Graz and Ljubljana in the Slovenian regions (1811, 1821), so that archaeological assets that were discovered were sent to these newly established regional institutions and societies.

The whole system of cultural heritage protection in the Austro-Hungarian Empire was relatively effective, although the idea of special laws governing this area did not come to fruition. Gradually these efforts for the care of the common "transnational" values and the focus on monuments and heritage were strengthened until World War I, when the importance of these things increased for the individual nations.

_The Kingdom of the Serbs, Croats and Slovenes 1919-1928 and the Kingdom of Yugoslavia 1928-1945

The "first" Yugoslavian activities in the field of CPP were partly implemented through laws concerning forests (1929) and buildings (1931), while a specific law governing the entire field of CPP was only drafted. The influence of Central Europe was very important on this level and in professional CPP activities. In this framework CPP activities spread from Carniola to all Slovenian regions, and a regional decree on the export of art objects was issued, and the draft order on cultural and natural monuments protection was prepared. In this period the former function of the provincial conservator was replaced by the Bureau for the Protection of Cultural Heritage of Slovenia, which also provided the draft of Yugoslavian law for monument protection.

_World War II

During World War II items of cultural and natural heritage were heavily and systematically destroyed - in some cases for genocidal reasons - by the German occupier. Nevertheless, despite the extremely hard conditions, even before the war ended the first normative acts for the protection of some fields of cultural heritage were enacted. On 27. 1. 1945 the presidency of the Slovenian National Council published the decree of protection of libraries, archives, and cultural monuments. This also regulated measures for military activities that concerned the CPP. The Yugoslav national committee also issued the Order on Protection and Preservation of Cultural Monuments and Antiquities (20. 2.1945).

_Democratic Federal Republic of Yugoslavia, Democratic Federal People's Republic of Yugoslavia 1945-1963 and Socialist Federal Republic of Yugoslavia 1963-1991

The specific conditions at the end of World War II – the extreme damage to buildings and other immovable heritage, the decimation of complete regions with their natural resources

and cultural properties, urgent needs for quick renovation without proper materials and experts - demanded urgent and elementary legislation that joined both the cultural and natural heritage protection.³

After the enactment of the aforementioned decrees at the beginning of 1945, the first complete Yugoslav law on cultural monuments and natural curiosities was enacted in July 1945. The next one, the General Law on Cultural Monuments and Natural Curiosities (1946) was slightly more elaborated and included provisions on the responsibilities of the State within this framework and delegated some functions from the federal State to the republics.

In May 1948 the first Slovenian law with similar contents was enacted. The general federal law (1959) referred only to cultural monuments, as did the Republic's law in 1961. In 1981, the common law on natural and cultural heritage was enacted. With that legislation the whole heritage, regardless its ownership, came under the protection of the State. The network of professional institutions for the protection of specific types of cultural heritage was founded and the State became the owner of archaeological excavations. The law also determined the penalties for violations of the heritage provisions of the CPP. So those efforts significantly improved conservation activities and other efforts from the interwar period.

In that era the state of heritage protection was mainly influenced by legislation on the nationalization of enterprises and institutions, and the heritage was often neglected or even decaying due to improper care. The subsequent enforcement of the concept of public property and later self-managed communities approached the issues of culture and cultural heritage and involved many local inhabitants in its management, although these efforts were not always appropriately supported in a material and professional manner and therefore were not sufficiently effective.

As an illustration of the social status of CPP protection, we may look to data on the valorization of CPP and the ranking of cultural monuments in the aforementioned periods. The need for a proper classification and valorization of cultural and historical monuments, which form the basis for the focus of public concern, started relatively early. In 1962, the Slovenian Institute for Protection of Monuments published a provisional list of the most important monuments in the territory of Slovenia, which consisted of 590 buildings and sites. After professional discussion and more detailed criteria, in 1974 it was possible to publish a redefined and slightly expanded list of monuments of the first category as the key objects that represent "the highest achievements of Slovenian culture or most typical by its nature and therefore irreplaceable in the Slovenian geographical area".⁴ Those sites have international rather than national importance. In addition to this list, lists of sites of regional and local importance were also created.

The regulatory framework for the ranking of the sites also appeared in the Law on Natural and Cultural Heritage, 1981. Article 15 describes the stationary parts of the cultural (and natural) heritage with a particular cultural, scientific and aesthetic value that could be declared as a monument with a competent authority of the local community. If the national or regional parks or other monuments "are of large and extreme importance for Slovenia," a proper act should be declared by the Assembly of Socialist Republic of Slovenia (Article 21), but detailed criteria for this were not provided.

Republic of Slovenia (from 1991)

In the independent Republic of Slovenia only the Law on the Protection of Cultural Heritage in 1999 clearly distinguishes between two categories of monuments - the monuments of national and of local importance. The first group places utmost importance on those items which represent the "crowning achievement of creativity or critical or rare testimony to a particular historical period, monuments of local importance that are relevant to the nuclear or extended local area based on professional criteria" (Art. 5). In order to ensure comprehensive care and effective protection for the monuments of national importance, a specific law on the nationalization of cultural monuments in former social ownership was adopted.

³ Baš, Franjo, Organiziranje spomeniškega varstva v slovenski preteklosti. Zavod za spomeniško varstvo Slovenije. Ljubljana 1953 (1954), 13-34.

⁴ Spomeniki I. kategorije. Zavod za spomeniško varstvo SR Slovenije, Ljubljana 1974.

The current Cultural Heritage Protection Act (2008) does not change the basic definitions of the monuments, but the differences occur within the scope of protection. While the previously mentioned Act (1999) prohibited the alienation of monuments of national importance owned by the State, the Protection Act of 2008 allows that the protection of monuments could be cancelled, if this improves its preservation and public access to the monument. Disposal is not possible for archaeological sites or for monuments declared on the basis of international treaties (Art. 62.).

I The reality of realisation of the legal status described

The relative short period of implementation of the 2008 law shows us some examples of good practice, but also some deviations in the case of rebuilding monuments, along with questionable contemporary professional „doctrines,“ like facadism and reconstructions of monuments, as examples of arrogance and insolency as well as unsuccessful attempts of selling monuments.

_Examples of good practice

As examples of good practice we took into account the objects that were legally protected after World War II as the whole property and that today form the cultural infrastructure. For this group it is characteristic that the objects were systematically renovated in advance and the quality of its contents were ensured.

It is about safeguarding the fundamental building structure and placement of appropriate contents with an emphasis on the protection of heritage (museums, galleries). So the presence, the existence, and future of these objects is *via facti* maintained within real financial and professional conditions.

We are primarily speaking of museums or galleries, or buildings with cultural functions such as, for example, the castles in Murska Sobota, Lendava, Ptuj, Maribor, Slovenj Gradec, Velenje, Celje, castle Kiselstein in Kranj, Bistra, Brežice, Podsreda, Metlika, castle Grm in Novo mesto, Kromberk and others.

Some monasteries also have to be included, those that have succeeded in keeping their primary function and that are appropriately maintained, like the monasteries in Pleterje, Stična, Mekinje (Kamnik), Kostanjevica (Nova Gorica) and Piran.

Some monasteries and castle buildings, like, for example, Ljubljana castle, the castle in Bled, and the monastery in Kostanjevica na Krki, serving direct museum-gallery functions as well as those for the substantive wider public space.

_Examples of insolency, ignorance, and arrogance

Several monuments were removed or destroyed because of insufficient legal protection and due to the partial interests of local communities in the maintenance of the space, building lobbies, as well as the powerlessness or poor strategies of the competent professional bodies for the protection of immovable heritage. Let us nominate some cases that are especially obvious and may serve as a warning for addressing similar cases in the future.

Kolizej in Ljubljana, the very important building of early historicism, was only proclaimed as a cultural property monument in 1993. In 2003 the municipality sold the building to a private owner who presented a plan for demolition and new building development in the area, which was in conflict with the current urban policy.

Only in 2005 its conservation program was accepted in accordance with the proclamation. At the same time the monument was temporarily (for 6 months) listed as a monument of national importance. Since the re-declaration of temporary or permanent monument status was not made, the municipality enacted an ordinance amending the proclamation act in October 2008, which - in accordance with the new law on CPP (2008, Art. 31) – allowed the »planned demolition.« In 2009 the Ministry of Culture published the cultural-protective consensus for research and removal. The destruction of the exceptional monument, one of the few examples of an early historicism in Slovenia began and soon ended in August 2012.⁵

⁵ Lazarini, Franci, Kolizej. Umetnostna kronika 32, 2011, 66-69.

The mismatch, a disconnect between the efforts of the professional services CPP on one side, and the local community along with the private owner on the other, is more than obvious. Partial, private interest prevailed as the consequence of the “loosening” protection regime, described in the valid law on CPP in 2008.

The case of the self-destruction of the residential building **Taborska 19 in Maribor** is an instructive case of an extremely inappropriate attitude of the owner, who deliberately left this building in the one of the most important historical streets in town to decay. It is also a good example of the lump protection by Decree, which in fact does not have an effect on the management of built heritage nor does the professional service adequately monitor the state of the object.



Fig 1: The Mansion Thumersfelden, called also “Štok”, 2008.

The Mansion Thumersfelden, called also “**Štok**” in Vuzenica, built in 1658 and one of the oldest and largest monuments in surroundings at the end of WWII lost its primary function.⁶

Despite its status as the local monument, it was decaying because the owners were not able to undertake the necessary urgent building rehabilitation. Due to the poor maintenance, or rather total lack of maintenance of the facility, in recent years such a high degree of damage appeared that – following the statement of the CCP agency - the restoration was deemed impossible. The community of Vuzenica – in accordance with the CPP agency – exempted the mansion from the monument protection and enabled the final demolition, which was passed to the owners. In 2007 the object was removed.

In Koper, on the Ukmarjev trg square, the building of the former “**Police station**,” was a good example of a residential building from the early 19th century with an modern annex built in 1957 by Emil Medvešček.⁷ The building complex, well situated between the edge of the medieval historical center of Capodistria and its main port was in good shape, but removed 2008 for no obvious reason.

A good example of a conflict of interests is „**CELEIA PARK**,” where a part of the archeological monument was destroyed. Before the construction of the building Celeia Park (2003)

⁶ Praper, Jože, Vuzenica znamenitosti in zanimivosti, Vuzenica, 2007, str. 212, 213.

⁷ Čebren Lipovec, Neža, Arhitekturni pomniki povojne izgradnje Kopra po drugi svetovni vojni. Annales, Series historia et sociologia, 22/1, 2012, 221.

was within a protected archaeological area, listed in the Register of Immovable Cultural Heritage. The excavation and an additional probe jam was allowed without archaeological supervision, and later probe fissure caves were filled with concrete. Neither the initial warning of the CPP agency, nor subsequent orders to stop the works and other measures by the Inspectorate for the Protection of Cultural Heritage and the Ministry of Culture, supported by the observations of archaeological expert committee were regarded, and a new multi-purpose commercial-office building was built, but an important part of the Late Antique heritage was destroyed.

Since then a hearing of the case has been held to determine responsibility for the partial destruction of the cultural heritage areas. Finally, in 2013, after ten years, the penal process ended with the conviction of the director and the owner of the enterprise.

The Castle Radvanje, declared a cultural and historical monument in 1988, was sold to the private firm Marking Ltd. in 1991, without monitoring of the county. In 2002 the company began the process for obtaining permission to construct two residential blocks with underground garages and parking in the courtyard of the castle. On its construction the responsible CPP agency issued a positive opinion, together with the consensus on the submitted projects. Later, the new leadership of the Institute gave an adverse opinion, the villagers of the local community also protested, and the Inspectorate for the CPP carried out the inspection and began the process of rehabilitation of the matter. At its suggestion, the Minister of Culture sent a proposal to the Ministry of Environment and Spatial Planning to repeal the previously issued building permission for material breach of the law (building on the protected area). The Ministry of Environment did not agree with the proposal and the expiration of the deadline for action by the right of supervision was formally pre-trial satisfied with the statutory requirements for the granting of the relevant cultural protection agreement.

Following the line of questionable decisions, both blocks were erected, and today serve their purpose. Meanwhile, the inspectorate had addressed orders to improve maintenance and to undergo urgent renovation of the protected building to the owner of the castle, but without any results.

Sale project of state monuments

The current law from 2008 has also included the possibility of selling monuments in state ownership. There were some public announcements on a sale of castles owned by the state, including the castles of Bizeljsko, Borl, Gradac, Socerb, Socka, Otočec, Rihemberk, and Viltuš. Until now the only castle successfully sold was Socka.

Rihemberk castle (Branik), the oldest (dated to the end of the 12th century) and the largest castle in the Primorska region, was proclaimed a cultural monument in 1985 and a monument of national importance in 1999. In this same year it was nationalized – in accordance with the law. This monument was unsuccessfully put on sale several times and therefore costless transferred to the municipally Nova Gorica with special contract in February 2013. The contract obliges the owner to provide the conservation plan, the plan for the management of the building, and to undertake the renovation (in accordance with previously accepted conservation guidelines) within three years. In seven years the renovated castle has to serve its function in accordance with the contract. Currently, the plans for its rehabilitations are ready and are waiting for confirmation by the Ministry of Culture.

The future will perhaps show the usefulness of such an approach and provide a solution for other similar cases.

The „total reconstruction / rebuilding “ doctrine

The cases presented here are lacking the continuity of research or even the relation between the building conversation works and the profession. The works are carried out long-term and often with the aid of public works, which does not guarantee the professional interventions or even the quality of the reconstructed parts.



Fig 2: The monastery of Žiče. Photo: Mitja Guštin.

The doctrine of „total reconstruction / rebuilding“ has appeared in some cases in the wish to most clearly present the ruins for touristic goals. Its long-term goal is a complete reconstruction of the certain cultural heritage sites that have an historic, panoramic, or symbolic value for a certain area. One of the most prominent examples is without a doubt **Celjski grad** (Castle od Celje), where reconstruction works have taken place periodically for almost 50 years in the wish to represent one of the two symbolic objects of the Counts of Cilli and the later Princes above Savinja.

A similar starting point for the total reconstruction is planned also for the Charthusian monastery **Žiče**. With the help of public works “the less demanding” restoration of the walls has already been carried out for a decade; and among the recent proposals “the reconstruction of the monk chambers into the apartments of the hotel” in Špitalič stands out, along with the so-called reconstruction of the roof above the church of the upper convent.⁸

Some countries, like Great Britain and Germany that have a highly developed process to assess the significance of cultural monuments of the same rank as, for example, the charterhouse Žiče, no longer support total reconstructions, but instead “merely” the high quality “archeological” presentations of the preserved parts of the monument.

_Fasadizm - „Apple peel doctrine“

In the last few years the fasadizm, so-called **„Apple peel doctrine“** has reached its peak as an excuse to renovate the cultural monuments as much as possible and most appropriately. The external effect is considered most important: the preservation of the traditional view of the façade and their position in the environment; while new spatial allocations and materials maximize the economization of the interior. The primary cases of this doctrine are the reconstruction of the famous Palace Hotel in Portorož, the construction of the new residential area in Ukmarjev trg in Koper with the two security walls of the classicistic buildings, and the preservation of the façade of the gothic house in Ribiški trg in Koper.

In specific cases we are completely losing the monuments with this approach, which alter the technology and the building materials on one side, as well as their spatial distribution on the other side, and thus negate the possibility of understanding the object in its time.

⁸ Oter Gorenčič, Mija, Žička kartuzija. Umetnostna kronika 32, 2011, 77, 78.



Fig 3 The case of Ukmarjev trg in Koper. Photo: Mitja Guštin.

I Conclusion

The relation between current legislation and the practical implementation of the heritage protection is quite complex.⁹ First, it should be estimated to what extent the analysis or an objective estimation of the actual state in a certain field (in our case CPP) affected the preparation and enactment of the specific law. On the other side it is important to know how the sub acts affect the main goals and solutions as provided by the law. Furthermore, it is essential to determine whether the professional service is adjusted to the contents of the specific laws, which are related to material (financial) and staff possibilities for the full realization of the legal obligations, etc. Because such a treatment without a doubt requires more time and efforts, have we tried to indicate the most significant areas communicated by the law to actual politics and which are definitely a present concern throughout the selected field.

From this generalized point of view it can be concluded that the impact of some legal solutions of the valid law are already reflected in practice. For example, regarding the broad-based attempts at selling national monuments that are state property it is evident that the former CPP law (1999) strictly forbade that possibility, while the current law (2008) enables it, although with a modest indication as an exception. Interesting is the statutory declaration of the reasons for the sale: to enable the proper maintenance and protection of and easier access to the monument.

The question is why it is necessary to search for a new owner when the special law on nationalization was enacted particularly to protect the monuments more effectively. So these vaguely defined goals now cause dilemmas and confusion that is reflected in the mass offering of the monuments of the highest status on the market. This handling was also provoked by the financial crisis, and the overall result is the deterioration of the care for monuments of the highest rank.

The statements of the 1999 and 2008 laws about the pre-emption for the cultural monuments also probably contributed to the unclear situation in CPP ; after the first law it was reserved for the state and municipalities, after the second one both of them can

⁹ Jogan, Savin, Slovenian legislation in the field of cultural property protection: data, developments and some dilemmas. M. Guštin, T. Nypan (eds.), Cultural Heritage and Legal aspects in Europe. Koper 2010, 136-159.

transfer monuments to the third person for the same reasons as for selling them. The practice in that field is neither developed nor analyzed, and the deference to the interests of the capitalistic organizations has become more than obvious.

The scarce responsibility of the owners of the monuments has already been described in the omission of the individual decree for monument protection in the provision. The legislation obviously cannot effectively deal with the uncoordinated interests between professional services, state, local communities, and owners in advance – this would require a proper comprehensive strategy of cultural heritage protection, which has not yet appeared.