

Academia Istropolitana Nova, Svätý Jur
Built Heritage Conservation and Development

**Legal protection of cultural heritage continued: *Tax incentives for conservation* –
Trimester Paper II**

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I. Introduction

In my first trimester paper I have analysed the constitutional and legal basis for the protection of cultural heritage in Slovak republic. I have focused on that part of cultural heritage which is *privately owned and used as a residence, not for business purposes*. I have mentioned Article 44 of the Constitution containing right to protection of cultural heritage¹ and § 1 section 2 of the Act n. 49/2002 Coll. on the protection of monuments and historic sites (the „Monuments Act“), which recognises that the conservation of cultural heritage is in the public interest. The legal framework recognises the importance of preserving cultural heritage for the benefit of future generations, however responsibility for their conservation is entirely shifted on those, who own them. Pursuant to § 28 section 2 a) of the Monuments Act the owner is obliged to carry out the basic protection of cultural monument at his/her own expense. The basic protection does not include maintenance² and therefore the owner must obtain the authorisation of regional Monuments Board before proceeding with the maintenance. The Monuments act contains a legal basis for financial support, but at the same time a disclaimer that there is no legal entitlement to it³.

On the one hand there are burdensome procedures for the private owners to follow, on the other hand there is little financial support available to them. It is not surprising that the condition of many cultural monuments deteriorates.

This unfavourable situation could be overcome by various aid measures. Therefore my mission in this paper is to examine the aid measures available to owners in the countries of Council of Europe and to compare them to the current situation in Slovakia and propose a reform of the system.

¹ “(1) Everyone shall have a right to favourable environment. (2) Everyone shall have a duty to protect and improve the environment and to *foster cultural heritage*. (3) No one shall imperil or damage the environment, natural resources and *cultural heritage* beyond the limits laid down by a law. [...] (5) Details on the rights and duties according to paragraphs 1 to 4 shall be laid down by a *law*.”

² The maintenance is classified as renovation, which is „the set of specialised professional activities for the maintenance, conservation, repair, adaptation and reconstruction of a cultural monument or its part“ (§ 32 section 1 of the Monuments Act).

³ § 34 section 1 of the Monuments Act.

II. Commitments related to the membership of Council of Europe and European Union

Council of Europe Granada Convention for the protection of the architectural heritage of Europe, states in article 6 that :

„Each Party undertakes:

1. to provide financial support by the public authorities for *maintaining* and *restoring* the architectural heritage on its territory, in accordance with the national, regional and local competence and within the limitations of the budgets available;
2. to resort, if necessary, to fiscal measures to facilitate the conservation of this heritage;
3. to encourage private initiatives for maintaining and restoring the architectural heritage.“⁴

The member states of the Council of Europe⁵ are reminded here, that it is not enough to impose maintenance and restorations obligations, but it is necessary to resort to financial aid, including tax measures. Practical experience shows that positive extralegal incentives deliver better results than simple legal prescriptions *do or don't do*.

Council of Europe recognises that the responsibility for the conservation of any particular object or site rests first with the immediate owner. Where necessary that owner should be given whatever support and encouragement the wider community might be able to offer. The public funding is often inadequate especially in the countries who are in transition from state-run economies, therefore the other sectors⁵ should be encouraged to act. Committee of Ministers of Council of Europe has been proposing measures to promote funding of the architectural heritage, but unfortunately they have not been put to practice. The Parliamentary Assembly therefore recommended in its report to review the existing systems, to coordinate tax incentives in different countries, to encourage the governments to support NGO's and to engage in dialogue with EU institutions so that any future VAT legislation takes into regard cultural heritage⁶.

⁴ Convention for the protection of the architectural heritage of Europe, Granada, 3.10. 1985, Council of Europe, European Treaty Series – No. 121.

⁵ 47 European countries plus Russia and Turkey with the exception of Belarus.

⁶ Report of Parliamentary Assembly, Doc.9913 rev., 13 November 2003, Committee on Culture, Science and Education. <http://assembly.coe.int/Documents/WorkingDocs/doc03/EDOC9913.htm>

European Union seems to ignore the Council of Europe efforts. Commitments tied to the membership of the European Union are almost incompatible with the commitments of the Council of Europe. The Article 87 of the Treaty establishing the European Community prohibits Member States to grant any aid, which distorts competition and affects common market. Aid to promote cultural heritage may be authorised only if it does not distort competition. Such an aid must be notified to the European Commission for its approval under Article 88 of the Treaty.

The EU did not respond to the efforts of the Council of Europe to endorse the incentives to cultural heritage in the field of the value added tax. The new Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁷, makes no scope for exemption of cultural heritage. The article 98 of the VAT directive authorises Member states to apply reduced VAT rate to provision, construction, renovation and alteration of housing, only *as part of a social policy, not cultural policy*. This remains only an option, not an obligation so the Slovak Republic opted to opt out of this option altogether.

III. Classification of Aid Measures

Public funding – i) Direct aid - grants

ii) Indirect aid – tax incentives - exemption/reduction of income tax, value added tax, inheritance tax.

Private funding – sponsors, donors

Systems of particular countries are composed of combination of the direct and indirect aid, where low grants are usually compensated by higher tax advantages or vice versa, but in Slovakia neither grants not tax incentives are available.

IV. Case of Slovakia

Direct aid

⁷ OJ L 347, 11.12.2006, p. 1.

Ministry of Culture runs a grant scheme under the heading „Obnovme si svoj dom“ for the maintenance and restoration of cultural monuments. All natural and legal persons, NGOs, municipalities and regions are eligible to apply for a grant, on a condition that they are owners of the cultural property and that they have other resources to cover at least 5 % of costs of the project.

The chart below shows the statistics in 2010.⁸



Number of applications	7563
Total sum of requested funding	100 391 531 Eur (3 024 395 263 Sk)
Total sum of approved funding	10 970 836 Eur (330 507 405 Sk)

It is evident that only as much 10 % of the requested aid for year 2010 has been approved by the Ministry of Culture. The rejected applicants are reminded that they can apply for finance from structural funds of the European Union.⁹

Indirect aid

Slovak tax system has been reformed in 2004 to establish a non - discriminatory and transparent tax system based on „equal tax rate“. This means in practice that there is single tax rate for both income tax and for value added tax of 19 %. The progressive taxation of higher incomes has been suppressed, but the system leaves little or no scope for exceptions, exemptions or incentives.

The income tax law does not provide for the deductibility of the costs of goods and services used for renovation of the dwellings, even if would be part of social policy, which is

⁸ https://registerkultury.gov.sk/granty2010/statistiky_verejne.php

⁹ Operation program *Basic Infrastructure*, priority n. č. 3 *Local infrastructure*, measure n. 3.1 *Construction and development of civil infrastructure*, sub - measure n. 3.1.4 *Construction and development of cultural infrastructure*, as well as measure n. 3.4 *Renovation and development of communities..*

more pressing at the moment, therefore one cannot expect these instruments in the field of a cultural policy.

The inheritance and gift tax has been removed during tax reform in 2004. Even in case it would be applicable it would concern only very few cases, where rich private owners did not secure the transfer of property by other means.

It has to be observed that in present there are no tax incentives and very little grants to promote maintenance and restoration of cultural monuments in Slovakia.

V. Case of England

Direct Aid

Officially known as the *Historic Buildings and Monuments Commission for England*, **English Heritage** is an Executive Non-departmental Public Body sponsored by the **Department for Culture, Media and Sport** (DCMS). The competencies and responsibilities are set out in the National Heritage Act (1983) and English Heritage fulfils the tasks in the field of conservation, giving advice, registering and protecting the historic environment. It also maintains a public archive, the National Monuments Record (NMR). English Heritage is a direct owner of some historic sites, where it charges the admission fees to supplement its income.

There are three categories of listed buildings in UK:

- a) Grade I buildings are of international interest (2, 5 %).
- b) Grade II * buildings are particularly important buildings (5,5%).
- c) Grade II buildings are nationally important buildings (92 % of all listed buildings).

In England there are approximately 374,081 listed building entries.

There are also:

- 19,717 scheduled ancient monuments
- 1,601 registered historic parks and gardens
- 9,080 conservation areas
- 43 registered historic battlefields
- 46 designated wrecks

- 17 World Heritage Sites.¹⁰

Here we see that the range of protected object is wider than in Slovak republic where there is only a list of movable and immovable objects and special lists for other objects. For instance parks and gardens are protected only together with the castle or manor as a whole.

The English Heritage distributes grants to repairs of Grade I and Grade II * buildings. The conditions are attached to ensure public access to the buildings and grants make up for max. 95 % of the costs, the rest has to be raised through private sponsorship.

The Heritage Lottery Fund is administered by the National Heritage Memorial Fund (NHMF) and uses money raised by the National Lottery for Good Causes. It is a non-departmental public body accountable to Parliament via the Department of Culture, Media and Sport. The fund runs a wide variety of grant programmes classified according to the topic and target group: Heritage Grants (£50,000 and over), Townscape Heritage Initiative (£500,000 to £2,000,000), Parks for People (£250,000 to £5million), Landscape Partnerships (£250,000 to £2million), Skills for the future (£100,000 to £1million), Repair Grants for Places of Worship (From £10,000 to £250,000).¹¹

Indirect aid

There are exemptions from Inheritance Tax and Value Added Tax. As regards the former tax, the exemption is applied on a case by case basis i.e. the authorities decide not to tax important buildings however the heirs must comply with certain conditions: they must maintain the building and they must provide access to the public. The aim of this favourable treatment is to prevent important properties to be sold or divided by heirs only to pay the tax.

The VAT exemption is the most important one. There is 0 % rate of VAT applied to the supply of materials and services intended for restoration of buildings, on a condition that the restoration has been approved by the authorities and the listed building consent has been obtained, and the building is not used for business purposes. The beneficiary to recover the tax paid.

¹⁰ <http://www.english-heritage.org.uk/server/show/nav.1373>.

¹¹ <http://www.hlf.org.uk/HOWTOAPPLY/PROGRAMMES/Pages/programmes.aspx>.

VI. Case of France

Direct Aid

In France, like in other continental European states, Ministry of Culture has responsibility for cultural heritage and the policy is implemented by its specialised directorate *Direction de l'architecture et du patrimoine* (DAPA, Architecture and Heritage Directorate). The Ministry provides grants alongside the regional and local government. The direct aid from state goes to max. 45 % of the costs of the project and therefore the aid package must be completed by the regional government i.e. the *départments*.

Indirect Aid

France has one of the most comprehensive system of tax incentives, which has hardly any precedent in Europe. Unlike in England where the owners are exempted only from VAT on restoration of their buildings, in France the owners can also deduct expenditure for maintenance and restoration from their *income tax*.

The exemption concerns not only properties, that are *listed* monuments, but also properties which are *non - listed*, but are part of heritage due to their particular historic or artistic interest, and must have a special ministerial approval.

Owners may deduct not only expenditure incurred for restoration, maintenance and repair work, but also interest on loans taken out for either the purchase of a property or work relating to it. The deduction conditions depend on the building's *status* (listed or non-listed) and the *access to the public*. Owners can deduct 100 % if it is open to public, and 50 % if it is not open to the public. In case of non-listed building requiring ministerial approval, the owners may deduct 50 %, if they provide access to public.

Owners of buildings located in a conservation area may deduct from their property income not only loan interest and expenditure incurred for maintenance and restoration, but also the cost of demolition work, of reconstruction of the roof or outside walls or of conversion for residential purposes, in so far as such work is provided for under the conservation scheme.

Membership fees paid to owners' associations founded in connection with restoration schemes are also deductible¹².

These properties are also exempt from inheritance and gift tax, if their owners sign an agreement with the state to open them to public for unlimited period.

Concerning the VAT, there is lower rate of VAT 5,5 % for works to all dwellings more than two years old.

VII. Case of other Central and Easter European countries (CEEC)

In Hungary and Estonia there are no exemptions from VAT for work on historic buildings. This also applies to income tax, inheritance or gift tax. The only exception is represented by Poland where unlike other CEEC, the cost of repairs and maintenance to all buildings can be offset against income tax.

Inheritance tax on historic buildings can be 0% if the owner contracts to maintain it in accordance to the law. In all other cases the rate of tax is 50%. Gifts of cultural property are charged at a lower rate of 15%. Local property taxes for historic buildings not used for business purposes can be a rate of 0%.

VIII. Conclusion

We have seen that selected countries (UK, France) offers certain combinations of tax advantages and grants. Where the grants are insufficient to cover real need, the governments do not hesitate to use tax incentives to encourage the private and voluntary sector into positive action. Therefore many neglected properties have been rescued.

Slovak Republic together with other CEEC's except Poland provides neither sufficient grants, nor any tax incentives. It uses only legal instruments to enforce the maintenance obligations upon owners, which usually fail due to lack of financial means. .This system limited to *do's* and *don'ts* and deprived of economic stimuli, is the heritage of the socialist past where the governments often resorted to orders and prohibitions. I do not consider it necessary to explain why it fails.

¹² There are numerous associations of owners in France : La Demeure historique (1924), Les Vieilles Maisons françaises (1958) etc..

The only way forward is to learn from the countries where the cultural monuments are flourishing.

The simplest measure which I would propose to adopt would be 0 % of VAT on restoration and maintenance of cultural monuments. In my view it would be easy to administer, there would be no scope for tax fraud, because it is easy to control what do owners do and the state budget would not suffer significant deficit, because this constitutes only a small percentage of the building industry. It would give a powerful stimuli to the interested parties to buy such a property and to restore it or the owners to restore their property. And a last argument in favour of VAT exemption is that the owners of cultural monuments would be encouraged to voluntarily comply with the Monuments Act, because they could reap real benefits, since the award of tax advantages would have to be tied to a condition of obtaining building consent of a Building bureau and Monuments board.

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