

Role of the State in Cultural Monument Preservation

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The state's functions requires it to assume multiple roles, and some of them are reflecting in the field of cultural monument preservation. Not only has the state a special public-law, superordinate status, it also acts as a private subject, which is quite apparent in the area of cultural heritage.

The role of the state in the area of cultural monument preservation is determined by the nature of the monument preservation itself. The monument preservation is to be hereby understood as a protection of cultural heritage of the society as a whole, that is, a public interest. This statement could be supported by international law, especially by the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference at its seventeenth session in Paris, 16 November 1972. This international treaty appeals particularly to the function of the state, its legislative and other roles in preserving cultural monuments.

The international and the national regulations imply the obligation of the state to protect the cultural heritage and the need to identify this protection as a public interest. Related to the monument protection, the matter of fundamental private rights could be involved and interfered with. Mostly this concerns the aspects of property. The role of the state in this case is logically represented by enforcing the public interest while preserving the private rights or keeping the interference to those rights to a minimum.

The law in Czech Republic concentrates the interests of monument preservation into the Act of state monument preservation¹, where the public interest as stated above is not expressed explicitly, but there is no doubt the public interest is implied. The basis of the national regulation of the monument preservation could be found in the Constitution itself, where the state declares the access to cultural monuments.

The concept of property protection could be also found in the Constitution, where the obligation to respect the property is stated, while the limitation of the right to property is accessible only by meeting the requirements of public interest, law, and by providing compensations.

The Czech national law provides a list of legal instruments to assure this form of enforcing the public interest, as the protection of cultural heritage is. On the one hand there are general instruments, consisting of overall protection of culturally valuable monuments, on the other hand there are specific forms of protection, related to particular objects or subjects. These specific instruments of monument preservation are either of a repressive or motivational nature.

The concept of public interest is not defined within the Czech national law, nevertheless it is used and stated as an important instrument of an application and realization of the law, state authority and thus the monument preser-

¹ Act No. 20/1986 Coll., of state monument preservation, as amended.

vation itself. The public interest is a factor widely affecting the decision-making of the state authorities, and even though state authorities are not authorized to define the public interest in the decision-making process, the public interest can still be identified and applied based on this process.

The public interest in the area of monument preservation has been confirmed by the practice of the Supreme Administrative Court of the Czech republic in the Award File No. 6 A 106/2002: *“The public interest of proclaiming an object a Cultural Monument is established in article n. 1 of the State Monument Preservation Act. This regulation declares that the state protects the Cultural Monuments as an inseparable part of a cultural heritage of the society, its history, the significant factor of the environment and an irreplaceable value. This general purpose is being specified in every individual category of monuments. In the case of Cultural Monuments is this public interest defined in the article no. 2 of the Act, thus the question of public interest of proclaiming an object a Cultural Monument is represented by accomplishing stated conditions.”*

Within the instruments of monument preservation there are, among the others, those allowing interference and limiting of the property while enforcing the interests of heritage protection. The Proclamation of an object a Cultural Monument alone brings in rights and obligations of the monument owners, but there are other specific instruments such as limiting the disposition of property by the obligatory-offer duty, or the instrument of expropriation, etc.

The Proclamation of an object a Cultural Monument is the foundation stone of the monument preservation system in Czech republic. The Cultural Monument status is one of the types of the protection proposed by the Czech legislative.² The state chooses the most important and significant monuments, thus providing the owner with rights and obligations³. The owner of such a Cultural Monument has an obligation to take care of the property and to protect it, as dictates the law or the decisions made by state authority⁴. On the other hand, the owner is obliged to tend to the Monument at his own expenses. These extra financial costs related to monument protection are to be covered by an allowance from the state budget.⁵ Except for the obligation to protecting the Monument the owner is also restricted in disposition with the Monument.

² The „Cultural Monument“ status is a type of an individual protection. Besides this main category there is also another form of an individual protection: the status of a National Cultural Monument. There are also categories of territorial protection: Monument zones, Monument Reservations and Protective zones.

³ This topic – choosing a landmark or a culturally significant object – was discussed at the Bavarian Higher Regional Court, Award File No. 3 ObOWi 107/86: “The pressing goal of the cultural monument preservation is obviously something more than just protecting unique, first-class monuments. It has also the obligation to protect objects lying underneath this layer of exceptional evidence of the human and earth's evolution. The substantial thing is, that these objects have non-insignificant value stated by the legal conditions.”

⁴ Decisions made by the administrative institutions concerning the insufficient state of fulfilling legal obligations of the Monument owners bind those owners to perform necessary precaution to protect and preserve the Monument at the owner's expenses, which means another interference into private rights. This case was being discussed at the High Court of the Czech Republic in Prague, or the Municipal Court of the Czech Republic in Prague, Award Files No. 7 A 144/1994 and 11 Ca 168/2005: “These obligations bind the subject anytime, thus the actions to assure fulfilling these obligations can be assigned at any time connected to the moment when did the breach of monument preservation occur.”

⁵ Art. no. 9, 15, 16, Act No. 20/1986 Coll., of state monument preservation, as amended.

In this matter of dispositions and compensations the Supreme Administrative Court presented opinions, such as in the Award File No. 5 A 48/2002: *“The protection of Cultural Monuments is related to a specific limitation of disposition with property in every cultural country. The law presents compensations for the Monuments owners for these limitations. The ones of a state or other grants can not be taken as a generalized compensation for the limitation of property, but only as a compensation for real and verifiable costs, that were raised due to these spoken limitations, especially due to specific demands of the monument preservation. As emerged from these facts the Proclamation of an object a Cultural Monument is not an unilateral limitation of property without a right to compensation.”*

The existence of the obligatory offer (Preemptive right of state to purchase Cultural Monuments) puts the state authority to the role of a collector of important and significant monuments and also partially covers the efforts to keep the monuments in the country. In the case that the Monument⁶ owner, or the owner of an object to be proclaimed a Monument, is considering selling this object, it is his obligation to offer the Monument to the state authority first. At that moment the state can use his specific status to buy the Monument. On the other hand there is no guaranteed obligation of the state authority to buy the Monument in the case the owner does not approve the proclamation of his property a Cultural Monument. In this relationship between owners and the state concerning the obligation offer raises a paradox: on the one side the state authority with efforts to protect the heritage, and the owners with the obligation to withstand the legal restrictions on the other side. There are at least motivational tax concessions for these owners.⁷

One of the radical and the most problematic instruments of heritage protection is the aforementioned expropriation. Because of its nature, meaning the breach to property that significant it's transferred onto the state authority, it should be used rarely, only in the most severe cases. In the field of monument preservation these cases mean situations when the Monument owners do not observe the rules and obligations and the authority has to interfere⁸. The public interest in this case is one of the obligatory conditions that have to be present and cannot be left out. The state authority in the cases of needed expropriation acts as a protector of the Monuments, endangered mostly by inactivity of their owners.

All the above-mentioned legal instruments are some of the most used instruments in the monument preservation in Czech Republic. The primary protection is established by the selection and categorization of objects as Cultural Monuments. The following secondary protection is based on this primary se-

⁶ The obligatory offer relates only to movable assets and all National Cultural Monuments. The real estate Cultural Monuments were left out of this legal concept.

⁷ Art. no. 9, Act No. 338/1992 Coll., on real estate taxes, as amended.

⁸ The expropriation is the „last resort“ of all the possibilities. In cases the owner does not take care of the Cultural Monument, this obligation is forced upon him by the authority.

lection. The state authority chooses, based on legal conditions and requirements⁹, cultural objects to be protected.

At the moment the monument gains the status of a Cultural Monument, the state authority also acquires the right to control and interfere to the disposition with the Monument, even though it's not a part of the state property. The emphasis is put on the preventive protection, via positive motivational legal instruments (financial benefits, tax reliefs) as well as the negative motivational instruments (possible sanctions). At the end the state authority can also partially control the ownership of the Monuments, because of the obligatory offer.

If these motivational legal instruments are not sufficient, the authority has the right to intervene and can expropriate the Monument in the name of public interest.

The role of the state in the case of monument preservation is essential and irreplaceable. Besides providing the primary legal framework for the monument preservation, the state can also be identified as the authority that implements the above-mentioned legal instruments as well as the owner of the Cultural Monuments to respect these actions himself.

The state acts as an owner of the Cultural Monuments, while not exactly flawless. There are many cases the breach of monument preservation was so severe, that the Monument itself had to be demolished for safety reasons.¹⁰ The state defines the rules that the state itself has to observe. The state authority on one hand implements the aspects of monument preservation and applies the legal instruments at its disposal, but at the same time these instruments fail to accomplish their goal.¹¹ This dual role of the state, meaning the role as an authority and an owner, should serve the cultural monuments, not to be that inconsistent with the concept.

⁹ The Cultural Monuments are „movable and immovable objects and, as appropriate, groups of such objects

a) that are important documents of historical development, of the life style and of the environment of society from the most ancient times to the present day, as manifestations of the creative abilities and work of humankind in various fields of human activity, based on their revolutionary, historical, artistic, scientific or technological value,

b) that have a direct relationship to important persons and historic events.“

(Art. No. 1, Act No. 20/1986 Coll., of state monument preservation, as amended.

¹⁰ The Public Defender of Rights has been warning about the disastrous state of the state Cultural Monuments and the state of monument preservation itself. The particular case mentioned in the report was the case of the winter stadium, which was a property of the Capital city of Prague and had been demolished because of inactivity of its owner.

Public Defender of Rights: Report of the Public Defender of rights from January 1st 2012. <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/dlouhodobe-problemy-v-pamatkovopeci-ohrozujikulturni-bohatstvi-ceske-republiky/>

¹¹ This insufficiency is being admitted by the state authority itself. But the state also mentions that at the current state of legislation the ideal state can hardly be reached, but the concept, prepared by the Ministry of Culture of the Czech Republic, does not provide enough amendments in this particular area. Ministry of Culture of the Czech Republic: The Concept of the Monument Preservation, Ministry of Culture of the Czech Republic.

<http://www.mkcr.cz/assets/kulturni-dedictvi/pamatkovy-fond/analyzy-koncepce-dokumenty/Koncepce-pamatkove-pece-schvalene-zneni.doc>

The state on one hand, according to the listed legal instruments, acts as an authority that protects the Monuments and prefers the private ownership of these Monuments, but on the other hand it does not provide sufficient motivation for private owners to protect the Monuments. Thus the state should focus on a motivational aspects of its influence. The basic problem is a situation where the owner, other than the state itself, has no desire to protect the Monument. The state authority limits the fundamental right to disposition with the property, while it does not offer the means of solving situations where the private owner has no interest in the cultural value of the Monument.

Financial support from the state to the owners of the Cultural Monuments is the most important positive motivational instrument, but does not entirely correspond to the principle of equality in Czech Republic. The state should guarantee an equal access to financial support for the owners of the Monuments, but it breaches this principle by the concept based on the Cultural Monuments categorization. The state authority supports only the owners of proclaimed Cultural Monuments, but not the owners of monuments in the areas protected territorially¹². In this case there is a significant non-equality between these owners causing further decrease of motivation to protect the cultural heritage.

The financial aspect of the cultural monument preservation is a very problematic issue in the discussed field. The state does not provide enough financial aid, and at the same time the state forces the private owners to protect the Monuments at their own expenses, without any legal certainty that those expenses would be compensated from the public funds. This aspect of the cultural monument preservation is the main downside of the whole concept, where instead of positive motivation the state forces the private owners to perform their obligations in a negative way. For instance the state can force the owner to protect and take care of the Monument at the owner's expenses, but the owner might not even have that amount of finances. If the owner in this example does not meet the obligations, the state can sanction him. The ultimate case of this action could be the expropriation, which leads directly to immediate protection of the Monument, but can be caused by the shortage of finances intended to cover the state-imposed conditions.

There are many restrictive measures and obligations on one side, on the other side there do not exist sufficient compensations for these restrictions. The cultural monument preservation is an important public interest and the state authority is the implementer. The state has many legal instruments at its disposal, such as expropriation, limitation of property, but these represent a significant intervention into fundamental human rights, thus the course of the state authority actions should aim for less radical means and should be more supportive towards the private ownership. The discussed public interest is one of the basic interests of the society and the state should respect and deepen that concept.

¹² This problem should be solved in future legal amendments, as stated by the Ministry of Culture. In: Ministry of Culture of the Czech Republic: The Concept of the Monument Preservat, Ministry of Culture of the Czech Republic. <http://www.mkcr.cz/assets/kulturni-dedictvi/pamatkovy-fond/analyzy-koncepcedokumenty/Koncepc-pamatkove-pece-schvalene-znseni.doc>

Sources:

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