

June 2014
Prishtinë, Kosovë

Developed by



PROTECTION AND PROMOTION OF THE CULTURAL HERITAGE

Initiated and supported by the
Kosovo Foundation for Open Society's project




Input for the Progress Report 2014



**PROTECTION AND PROMOTION
OF THE CULTURAL HERITAGE**

June 2014

Prishtinë, Kosovë



Foreword

The Kosovo Foundation for Open Society has supported Kosovo's European integration process since 2006, when it founded the European Integration and Good Governance program. Since then, the Foundation has constantly supported the non-governmental organizations' engagement in the process with their analysis, monitoring of policy developments, public discussions, and advocacy processes. The support has resulted in numerous analyses through the years and acquisition of essential knowledge and expertise over the processes by Kosovo's civil society organizations. Hence, in joint effort with a number of organizations already active in certain segments of integration process, the Foundation initiated the project "Civil Society for the Progress Report 2014" through which it offered the organizations an opportunity to channel their contribution to the upcoming Progress Report and the current Stabilization and Association Process Dialogue through focused and well-informed analysis, built on their multi-year experience and engagement.

Each analysis produced within the project addresses a specific segment of the current dialogue between Kosovo and the European Union, informing about the current situation, from the civil society's point of view, followed by the recommendations on the needed improved performance.

We hope that this exercise has produced will be of value not only to Kosovo's civil society organizations for further amplification of their voice within the integration process, but also to the European Union and the Government of Republic of Kosovo towards building of a standing cooperation with this segment of the state-building process. Ultimately, we hope that as a result of all the stakeholders' engagement, Kosovo's European integration process will accelerate, overcoming all the political barriers that stand on our way to this destination.

Iliriana Kacaniku
European Integration and
Good Governance Program

Content

- 5 Main Challenges and Recommendations
- 8 Additional recommendations
- 9 Destruction of towns (historic centres)
- 11 Cultural Heritage List
- 12 Institutional Coordination and Integrated Conservation
- 14 Protection of Historic Centre of Prizren
- 15 Protection of the Historic Centre of Prishtina
- 16 Damaging Cultural Heritage is a Criminal Offence
- 18 Illegal Constructions and Legalization Process
- 20 About EC Ma Ndryshe

PROTECTION AND PROMOTION OF THE CULTURAL HERITAGE

Main Challenges and Recommendations

Laws are not protecting the cultural heritage – Despite Kosovo’s quite advanced legal and institutional framework on the protection of cultural heritage, the towns and cities Historic Centres are systematically being degraded. The Kosovo’s Progress Report 2013 explicitly concludes that “business interests often prevail over the cultural heritage interests”, alluding to the illegal construction. This degradation is an indicator of institutional failure to protect Historic Centres and assertion of a conclusion that legislation is insufficient to provide for law and order in urban planning and cultural heritage protection in Kosovo.

Interim protection is insufficient – In 2012, the Ministry of Culture approved the Cultural Heritage List of sites under the interim protection. As a consequence, Kosovo cannot put any cultural heritage site under legal protection. The same action was repeated in 2013, when the MCYS extended the validity of List of Cultural Heritage sites under interim protection for another year. Inability of authorities to provide for permanent legal protection of cultural heritage sites is one of the biggest failures, and the usual excuse of MCYS points out to the failure in operationalizing the Cultural Heritage Council of Kosovo.

Therefore, the following is recommended:

- Completion of national inventory list and permanent protection of cultural heritage – inventory would be used to identify, assess and determine the cultural heritage sites under permanent protection and to draft the Cultural Heritage List;
- Declaration of the cultural heritage sites under permanent protection – cultural heritage sites should enjoy permanent legal protection and the primary task of cultural heritage authorities and of the Assembly of Kosovo is to declare the cultural heritage sites under permanent legal protection. Amidst the lack of legal guarantees, the cultural heritage is doomed for destruction;

- Making the Cultural Heritage Council of Kosovo functional – the Council is not functional for a long period of time, thus making the permanent protection impossible. This is the reason why the Assembly of Kosovo should appoint the new members of Council as soon as possible, and at the same time promulgate the new law on cultural heritage.

Lack of institutional coordination – The state authorities at both levels of government still have not put in place the coordination system between two domains of public policies, namely the urban and spatial planning and protection of cultural heritage. The lack of institutional communication at the local level is even more detrimental for the fate of cultural heritage. Scores of cases violating the CHRC permissions by both the municipal authorities and developers have been registered. On this note, the construction sector in Kosovo continues to be on the spotlight for mismanagement and corruption. More specifically, several municipal officials of Prizren and some construction companies are under investigation by the District Prosecution due to urban planning irregularities. The same situation is present in Prishtina, where some municipal officials are involved in the urban planning chaos that has engulfed the city.

Therefore, the following is recommended:

- Drafting of a strategy/program for the implementation of integrated conservation of cultural heritage through the establishment of an emergency inventory of cultural heritage with the aim of putting the cultural heritage sites under permanent protection and inclusion of Cultural Heritage List of the Republic of Kosovo within the country's urban plan and municipal urban development plans;
- Effective monitoring of adherence to cultural heritage principles in municipalities – urban planning sector in Kosovo municipalities, especially in those with cultural heritage values, should have strict monitoring in place when it comes to adherence to cultural heritage laws and policies;
- Effective coordination between urban planning directorates and inspectors – poor communication between these two sectors would be fatal to the cultural heritage, therefore the mayors of municipalities bearing cultural heritage potential, should pay special attention to the coordination of urban planning directorate and inspectors in preventing the illegal constructions and violations of construction permits;

- Inclusion of cultural heritage in drafting of urban plans – the cultural heritage should be central component to urban planning in the municipalities with heritage potential. In drafting their municipal development plans, urban development plans and regulatory urban plans, municipalities should comply with all cultural heritage protection principles;

Degradation of Historic Centres – Approval of the Law on Historic Centre of Prizren and establishment of new mechanisms have not resulted with an improved effectiveness in the preservation of protected zone because the individual interests of “the strong” and of other groups of interest have prevailed at the political levels over the need to protect the cultural heritage. In Prizren, civil society and the media have reported scores of cases of illegal construction in the protected zone. The situation is also serious in Prishtina, where the relevant data show a high percentage (44%) of destruction of cultural heritage sites that used to be protected by law.

- Full compliance with Cultural Heritage Regional Centres (CHRC) – every approval issued by the CHRC should be mandatory for Kosovo municipalities, since they are based on international standards and national laws on cultural heritage. Therefore, every violation of dimensions provided for in CHRC permissions should be prevented and/or punished by Kosovo municipal authorities;
- Drafting of cultural heritage local plans – by engaging in strategic planning of cultural heritage, municipalities will add the value to an important potential for local economic development. Moreover, local cultural heritage plans shall pave the way for better inter-sector coordination based on the principles of integrated conservation.

Impunity of criminal offence “Damage of cultural heritage” – According to the Criminal Code, whoever damages or destroys protected cultural, historical, religious, scientific or natural monument or site shall be fined or sentenced with imprisonment of up to two (2) years. Damaging and destruction of cultural heritage, due to the practice of impunity, is being considered as minor violation (in the best case). Impunity is encouraging other detrimental actions against the cultural heritage. Building of hotels within the Historic Centre in 3-4 last years (almost all exceeding their original dimensions) best proves the repetition of violations if the original offenders are not punished. Inaction of authorities has installed and developed the culture of impunity in

Prizren. The Historic Centre is one of the grey zones of the rule of law in Prizren with a complete lack of transparency and accountability.

Therefore, the following is recommended:

- Implementation of laws through fines and sentences – Fines and sentences for destruction of cultural heritage would serve as preventive measures. Damage or destruction of cultural heritage constitutes a criminal offence, and impunity implies inability of authorities to ensure the rule of law. The option of punishment (through fines or sentences) for the criminal offence “damage of cultural heritage” may save it from complete destruction.

Legalization of illegal construction in protected zones – The process of legalization of illegal constructions is a very good opportunity for the cultural heritage, which, if used properly, may save it from further degradation. This is the reason why MESP, MYCS and Kosovo municipalities should be strict in the application of Article 12 of the Law on Legalizations, which prohibits the legalization of illegal construction in the protected zones and special zones of cultural heritage.

Therefore, the following is recommended:

- Demolition of illegal constructions in protected zones – with the purpose of preventing the total disappearance of historic centres and cultural heritage of Kosovo. To this end, municipal authorities need to take concrete actions in demolishing the illegal constructions and other construction exceeding their original layout dimensions that violate the principles of cultural heritage.

Additional recommendations

- Prioritizing the cultural heritage as a public policy of national interest – cultural heritage should be considered as national strategic potential for Kosovo’s economic and social development;
- Drafting of a national strategy on cultural heritage – legal framework and heritage policies should be coordinated and stem from a national policy. Through a national strategy, with an integrated approach being the main pillar, Kosovo would put in place the cultural heritage management system;

- Capacity building and budget increase for cultural heritage – newly established the Cultural Heritage Department needs to recruit new capacities, especially in policy drafting and implementation of cultural heritage international standards in Kosovo;
- Intensifying activities in ratification of cultural heritage international conventions – through the ratification of international conventions in the Assembly of Kosovo, the state authorities will unilaterally take upon themselves the international obligations for the protection of cultural heritage. Moreover, many of the principles found in these conventions will become a part of Kosovo’s legal framework and policies;
- Putting the subject of cultural heritage in the school curricula – awareness raising on the cultural heritage development potential should begin in elementary and high schools through a special subject on cultural heritage;
- Mobilization of citizen groups against the urban degradation – civil society organizations operating at the local level need to be involved in boosting the civic activism in order to save the values of cultural heritage in Kosovo’s cities and villages;
- Involvement in awareness raising projects on the importance of cultural heritage – civil society should be involved in non-formal education programs on cultural heritage, and in parallel should encouraged the state authorities for the inclusion of cultural heritage in the official curricula of elementary and high schools.

Destruction of towns (historic centres)

The state of Kosovo has very favorable legal and institutional framework in place for the protection of cultural heritage. A number of laws, by-laws and strategic documents adopted at the central level are applicable for quite a long period of time. Meeting the legal obligations stemming from these documents falls within the responsibility of a large number of central and local authorities, including the line ministries, municipalities, judiciary and Police. These responsibilities are clearly defined, and do not leave any room for interpretation or misunderstanding. In the case of Historic Centre of Prizren, except for the primary legislation (on cultural heritage and spatial planning) Law on Special Protected Zones and the Law on Historic Centre of Prizren have also been

adopted. At the same time, the Municipal Assembly of Prizren approved the Master Plan for the conservation of this zone.¹

Despite this advanced legal and institutional framework, Historic Centre of Prizren continues to face systematic degradation. Kosovo Progress Report 2013, published by the European Commission, confirmed the civil society concerns in Prizren and Kosovo for the cultural heritage degradation. The Report explicitly concludes that “business interests often prevail over the interests of cultural heritage”, alluding to illegal construction. At the same time, the European Commission, in the part of Report dealing with cultural rights, called for “strong actions to prevent the illegal and degrading activities, and to rectify the construction exceeding the dimensions provided for in their respective construction permits”.²This degradation is an indicator of institutional failure to protect the historic centres of Kosovo’s towns and confirmation of conclusion that laws are insufficient to provide for urban planning order and to protect the cultural heritage in Kosovo.

Immediately after the war amidst the legal and institutional vacuum,³Kosovo towns and cities were engulfed in an aggressive construction wave that came as a result of the significant need for new residential and business facilities. The main trigger of this development was migration from rural to urban areas that drastically increased the number of population in Kosovo’s urban centres. Except for the lack of urban planning legislation at the central level, Kosovo’s institutional system in municipalities was also not ready. With very fragile governing and urban management structures, Kosovo municipalities had very few opportunities to put under control this chaotic urban development. Moreover, it was only the municipal officials who were directly involved in numerous urban planning irregularities of this period, which at a different intensity continue to happen even to this day.

The old towns on Prishtina, Prizren and Gjakova are the most affected by the uncontrolled construction, while the rest of Kosovo towns and cities also did not manage to escape from this bad fate. The state authorities at the both levels of government, to this day

1 Municipality of Prizren, Conservation and Development Plan of the Historic Center of Prizren, <http://kk.rks-gov.net/prizren/City-guide/Plani-i-konzervimit.aspx>

2 European Commission, Kosovo Progress Report 2013, http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf

3 First local elections in Kosovo were held on 28 October 2000, while first parliamentary elections took place on 17 November 2001.

have not put in place the coordination system between the two domains of public policies, namely the spatial and urban planning and protection

of cultural heritage. In a nutshell, the spatial and urban planning continues to remain an isolated domain in drafting and implementation of policies, thus completely neglecting the need to take into consideration the cultural heritage protection.⁴At the central level, Ministry of Culture, Youth and Sports and Ministry of Environment and Spatial Planning have drafted and approved all important laws and policies without interacting with each-other.⁵

One of the most painful consequences of this process was the uncontrolled construction in the zones enjoying the status of historic centres. The old towns of Prishtina, Prizren and Gjakova are the most affected ones, while the rest of Kosovo towns and cities also did not manage to escape from this bad fate.

Cultural Heritage List

In 2012, the Ministry of Culture adopted the Cultural Heritage List of sites under interim protection.⁶This was a temporary resolution of a huge problem: we still not have an idea of what kind of cultural heritage potential is available for us. The state inventory was a promise made ten years ago, which was never fulfilled. As a consequence, Kosovo cannot put under legal protection none of the cultural heritage sites. The same action was repeated in 2013, when the MCYS extended the validity of the interim protected cultural heritage sites for another year.⁷Inability of authorities to provide for permanent legal protection of cultural heritage is one of the biggest failures in this sector, and the most frequent excuse of the MCYS was the dysfunctional Kosovo Council for Cultural Heritage.⁸

4 EC Ma Ndryshe, Gabim pas gabimi, /Mistake After Mistake/. http://ecmandryshe.org/repository/docs/Gabim_pas_gabimi_ALB.pdf

5 Amongst these laws and policies are the following: law on Cultural Heritage, Policy of Cultural Heritage Integrated Conservation, Law on Spatial Planning, Spatial Plan of Kosovo.

6 Listof Cultural Heritage under interim protection.http://www.mei-ks.net/repository/docs/Aneksi_2_-_Lista_e_perkohshme_e_trashigimis_kulturore.pdf

7 Koha Ditore, Institutional Disagreement Leave the Heritage Without Permanent Protection <http://www.koha.net/?page=1,5,118118>

8 The Kosovo Council of Cultural Heritage (KCCH) is legal authority for the protection

Under the Law on Cultural Heritage⁹, this Council has the central role to play in the system for the permanent protection of cultural heritage. As per the MCYS suggestions, natural and legal entities shall make assessments, reviews and declaration of cultural heritage sites under permanent protection. To this date, MCYS did not submit any assessment, and as a consequence the cultural heritage sites in our country have not been put under permanent protection, thus making the drafting of a List of Cultural Heritage Sites in the Republic of Kosovo impossible. Instead of drafting the suggestions for assessment and declaration of cultural heritage sites under permanent protection, MCYS made an ineffective improvisation by creating a list of cultural heritage sites under interim protection, which does not comply with legal parameters, and as such cannot serve for their effective and active protection.

One of the most sluggish MCYS projects is the Cultural Heritage Database that was launched in 2008 and funded by the British Embassy in Prishtina. The purpose of this Project was to make an inventory of cultural heritage sites that would be put under legal protection. Almost five years after its launch, Ministry officials continue to give promises for its conclusion. Every further delay will bear direct consequences for the cultural heritage protection¹⁰.

Institutional Coordination and Integrated Conservation

State institutions, at both levels of governance, have still not created a coordinating system between the two domains of public policies, spatial (and urban) planning and protection of cultural heritage. Simply put, urban and spatial planning continues to be an isolated field of policy drafting and implementation, thus entirely neglecting the need to take under consideration the protection of cultural heritage. The Ministry of Culture,

of cultural heritage established by the Assembly of Kosovo. Its mandate is to make the assessments and to determine the cultural heritage sites under permanent protection in the Republic of Kosovo (aimed at drafting the Cultural Heritage List). More details can be found at: <http://mem.rks-gov.net/>

⁹ Official Gazette of Kosovo, Law on Cultural Heritage: http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=237&Itemid=28&lang=sq

¹⁰ KohaDitore, In Four Years, Only half of Heritage Data Base in Place: http://www.kohaditore.com/index.php/repository/karikaturat/repository/docs/Raporti_per_Veri_Maj_2011?page=1,5,99586

Youth and Sports and Ministry of Spatial Planning, at the central level, have drafted and approved all the important laws and policies without involving one another.¹¹

At the municipal level, the institutional non-communication is even more fatal to the fate of cultural heritage. In nearly all cases, the municipal Directorates for Urban and Spatial Planning fail to coordinate with Regional Centres of Cultural Heritage. Tens of cases of violating the permissions issued by the RCCH have been found, both by the municipal institutions as well as the construction companies themselves. The construction sector in Kosovo remains one of those most mentioned for abuse and corruption.¹² Namely, certain officials of the Municipality of Prizren and some construction companies are under investigations by the District Prosecution for urban irregularities.¹³ The same goes for Prishtina, where certain municipal officers are involved in the urban chaos that has engulfed the capitol.¹⁴

One of the most essential policies of cultural heritage, approved by the MCYS in September 2010 in the form of a strategic document, is the one on integrated conservation.¹⁵ This policy document was preceded by a Strategy on Cultural Heritage Conservation in Kosovo, produced in 2005. This Strategy contained the following recommendations: re-defining institutional responsibilities, establishment of a cultural heritage department, completion of the legal framework, donor coordination, inventory of cultural heritage sites and education. Another policy document in this sector is the Guideline for Management of Cultural Heritage in Kosovo, which was produced in 2007 to describe the required steps for protection of cultural heritage in accordance with international standards on formulating management policies. Finally, a Guideline on Cultural Heritage (technical mechanisms of heritage conservation and management), as a starting point for placement of heritage standards and measures to promote the inclusion of state authorities, professionals and the community in the protection and

11 Among these laws and policies are the following: Law on Cultural Heritage, Policy on Cultural Heritage Integrated Conservation, Law on Spatial Planning, Spatial Plan of Kosovo.

12 EC Ma Ndryshe, Finally – Investigations on Urban Planning Crimes in Prizren, http://www.online-transparency.org/repository/docs/Komunikate_9.08.pdf

13 Zëri, Apartments that Lead to Crime, <http://www.zeri.info/artikulli/1/1/58630/banesat-qe-shpiejne-te-krimi/>

14 Zëri, Two Additional Months of Detention for Prishtina Municipality Inspectors, <http://www.telegrafi.com/lajme/edhe-nga-dy-muaj-paraburgim-per-inspektoret-e-komunes-se-prishtines-80-7145.html>

15 Ministry of Culture, Youth and Sports, Strategic Document, Integrated Conservation of Cultural and Natural Heritage Sites in Kosovo

promotion of cultural heritage was also drafted.

All of these documents have a common denominator, the integrated approach. Therefore, the integrated conservation policy presents the necessity for institutional coordination in protection of cultural heritage. Such an approach presumes that cultural heritage is a responsibility that is a lot broader than just for a single institution. Integrated conservation is related to inter-sectorial cooperation between various public-administrative entities, as well as the coordination of legislative measures so as to supplement and expand one-another.¹⁶ Namely, the institutional structure for protection of cultural heritage in Kosovo, beyond MCYS competencies, includes the Ministry of Environment and Spatial Planning and local governments. This point best shows the inability of Kosovo's institutions to create a single state structure for the protection of cultural heritage. At the same time, this situation is a proof, as well as a direct consequence of a lack of a National Plan for this Sector. The Kosovo Council for Cultural Heritage has drafted a Guideline for the Cultural Heritage National Policy (2011). The preparation of this multi-sector policy is dependent on specialized professional support, and has its own financial costs, which have not been secured as yet.

Finally, without the implementation of integrated conservation policies we will not be able to build a functional system for the management of cultural heritage in Kosovo. Failure to build a systematic approach has produced continuous tensions between competing interests: between protection and growth, tradition and modernization, handcrafts and innovation. "Management of cultural heritage truly has an important impact on the territory, regarding its basic dimensions, such as: economic growth and creation of new jobs, landscape and protection of the environment and infrastructure."¹⁷

16 The basis of integrated conservation principles was first placed in the European Charter of Architectural Heritage and the Declaration of Amsterdam, approved in 1975 by the Committee of Ministers of the European Council.

17 Ministry of Culture, Youth and Sports, Strategic Document, Integrated Conservation of Cultural and Natural Heritage Sites.

Protection of Historic Centre of Prizren

The Historic Centre is protected through a special law, the aim of which is to determine the rules for protection, administration and sustainable modern development of Historic Centre of Prizren as a site of cultural and historic heritage permanently protected and classified as a Special Protected Zone that has local, national and international values. The Law on Historic Centre of Prizren requires the Municipality of Prizren, in consultation with the Regional Centre of Cultural Heritage, to draft, approve and implement spatial and urban planning documents that are related to the Historic Centre of Prizren in accordance with the Law on Spatial Planning and the Law on Cultural Heritage.

The Law on the Historic Centre of Prizren was preceded by the Law on Special Protected Zones, which made it clear that the Special Protected Zone for the Historic Centre of Prizren shall be established by the municipal entities of Prizren in cooperation with the CIM, and will include the buildings of the Orthodox Church, ottoman, catholic, secular buildings, and other buildings of special heritage

and historical importance. On the other hand, in 2008, the Municipal Assembly of Prizren approved the Conservation and Development Plan of the Historic Centre of Prizren. This document sets out the parameters for protecting and developing the Historic Centre, as well as includes analyses of the zone relating to transport within the planned zone, use of land and use of ground and first floors of the buildings, the state of the buildings, number of floors of the buildings, construction materials, properties, ownership of the buildings, suitability of the buildings with the physical structure of the zone and its surrounding areas.

The approval of the laws and the creation of new mechanisms have not brought any effectiveness to the protection of protected areas because the individual interests of 'the strong' and certain interest groups have prevailed at the political level of the institutions compared to the need for protection of cultural heritage. Failure to meticulously enforce the Conservation Plan and the laws approved by the Assembly of Kosovo allowed for wild construction activities to take place, without any regard for the determined urban planning criteria, by ruthlessly attacking and damaging cultural heritage values. During this period, Prizren has turned into a role model how not to implement urban development. The concerns that the civil society has raised for years relating to the transformation of city's urban structures and the destruction of cultural heritage values by the narrow interests of business and political groups lately have even earned a place in the pages of the European Commission Progress Report.

Protection of the Historic Centre of Prishtina

The degradation of the Historic Centre of Prishtina (construction of new structures and interventions in old ones) has been going on for 15 years now. Some houses are undergoing demolition; others have been burnt down intentionally or without intent, whereas day by day the old structures are being replaced by new ones. Restorations of certain public and religious sites are continuing thus fuelling criticism for the professional and legal aspects of these interventions. However these are also accompanied by other megalomaniac interventions, such as construction of new buildings that attempt to align to modern architecture, but which in fact alienate existing cultural heritage values.

Construction activities in the zone continue to take place unplanned and unmonitored. The Municipality of Prishtina initiated regulatory plan for this zone (with accompanying tender procedures) three times in a row, and was interrupted due to the requirement of drafting preparatory Detailed Regulatory Plans. The mentioned zone, coined as the “Historic Centre” of Prishtina, currently lacks even a definition of its borders. As such, it lacks the legal status and is not protected as a zone. The sites of this zone once state-protected by the law of the Yugoslav/Serb regime, according to the Law on Cultural Heritage of Kosovo from 2006 enjoy a different status, that of interim protection. This status needs to be reviewed every year. The status of interim protection is extended as per the review and re-assessment procedure each year, and has, as a final product, the List of Cultural Heritage under Interim Protection.

Protection, preservation and active and suitable development of cultural heritage is a constitutional obligation. According to the Law on Cultural Heritage, approved in 2006, the following authorities are responsible in meeting these obligations: the Assembly of the Republic of Kosovo, Kosovo Council for Cultural Heritage (KCCH), Central Government (Prime Minister’s Office, MCYS, MESP, cultural heritage, territorial planning and cadastre institutions) and local government. Amendments in law-making and the process of establishing this institutional hierarchy also impacted the latest developments in the Historic Centre of Prishtina. Relevant data show a high percentage (44%) of destruction to buildings that were once legally protected. The state of numerous buildings (especially of individual houses) is very dire. Visually it may be assumed that a lot of them are under threat of partial ruination. During the last two decades, several cases of intentional demolition of old buildings have been registered so as to replace them with new ones. The existing state of the monuments has also been endangered by

new constructions, which have not respected the mandatory distance radius in cases of protected sites.

Damaging Cultural Heritage is a Criminal Offence

According to the Law on Cultural Heritage each legal and natural person has duty of care to safeguard the integrity of Cultural Heritage if he/she is owner, possessor or user of this Cultural Heritage (Article 4.10). Furthermore, the Law foresees that any legal or natural person that damages Cultural Heritage regardless of their ownership relationship to it, shall be fined or sanctioned based on the Provisional Criminal Code of Kosovo, the Law on Minor Offences and according to Article 11 of this Law (Article 4.11). Whereas, the article on sanctions specifies that failure to comply with the provisions of this Law concerning the authorization of activities will be subject to a fine by the competent court of a minimum of EUR 1.000 (one thousand) and a maximum of EUR 500.000 (five hundred thousand) for each unauthorized action.¹⁸

The Law on the Historic Centre of Prizren foresees that any legal or natural person that carries out construction, demolition, interventions to the infrastructure or any other prohibited activity, shall pay all necessary costs of recovering the damaged building of cultural and religious heritage into its pre-damaged state. According to this Law, the fines foreseen by the Law on Spatial Planning and Law on Construction are doubled in case of violations taking place within the Historic Centre of Prizren, whereas sanctions foreseen by the Law on Cultural Heritage shall also apply.¹⁹

The Criminal Code of Kosovo is also very clear on damaging, demolition and unauthorized removal of protected monuments or objects out of the Republic of Kosovo. According to the Criminal Code whoever damages or destroys a protected cultural, historical, religious, scientific or natural monument or object shall be punished by a fine or by imprisonment of up to two (2) years. Furthermore, if the protected monument is an object that has a unique value or if the offense results in serious damage, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years. The Criminal Code also determines the sanctions for damages caused during restoration work

18 Official Gazette of Kosovo, Law on Cultural Heritage at <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2533>

19 Official Gazette of Kosovo, Law on Historic Center of Prizren at <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2836>

or research done within the properties of cultural heritage. According to the Code, whoever, without authorization by the competent authority, conducts conservation, restoration or research work on a cultural monument, or, despite a prohibition or without the authorization, carries out archaeological excavations or research and thereby destroys or seriously damages a cultural monument or its characteristics shall be punished by a fine or by imprisonment of up to two (2) years. When these criminal acts are committed against a cultural monument of unique value or result in serious damage, the perpetrator shall be punished by a fine and imprisonment of six (6) months to three (3) years.²⁰

Despite all of this legal framework and the institutional system, the Historic Centres of cities are continuously being degraded. State institutions have failed to implement the laws, and above all, to punish the culprits. Damaging and demolition of cultural heritage, due to a practice of failure to punish, is considered to be a minor violation (best case scenario). The failure to punish is also encouraging other degrading acts against cultural heritage. The erection of hotels within the Historic Centres during the last 3-4 years (nearly all of with violations) best proves that offences will be repeated if the first offenders are not punished. Failure of institutions to act has created and developed a culture of non-punishment in Prizren. The Historic Centre is among the darkest areas of the Rule of Law in Prizren, with a total lack of transparency and accountability.

The protection and development of the Historic Centres of Prizren and Prishtina (as well as other cities) is a responsibility shared by the two levels of the government and a large number of institutions. Coordination between state institutions is required to put in place urban order in these zones. This coordination should be implemented on a number of levels, including the one within the municipalities (directorates), municipalities in relation to the KCCR and respective ministries (culture, spatial planning, local government), justice law enforcement institutions and Parliamentary supervision in relation to the government and municipality.

The main recommendation is the implementation of the laws through punishments that would serve as a disincentive. Damaging or demolishing cultural heritage is a criminal act and failure to punish implies the impotence of institutions to ensure rule of law. Only the option of punishing (fine or prison sentence) for the criminal act of “damaging

20 Official Gazette of Kosovo, Criminal Code of the Republic of Kosovo at <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>

cultural heritage” can save the Historic Centres from total destruction.

Illegal Constructions and Legalization Process

Illegal constructions have degraded the cultural heritage throughout the cities of Kosovo. Unfortunately, the cultural heritage was not spared the victimization by the new system of “values” after the war, which is characterized by a total lack of accountability and responsibility and a culture of impunity. In such an environment, those that invest in construction have managed to launder their money that was gained informally through numerous constructions, and during this process they also corrupted Kosovo local government officials. Essentially, the problem is related to non-prevention and impunity by the state authorities. Consequently, it is almost absurd to expect the same state to put order in place and to stop the degrading construction activities within the Historic Centres of cities. CSO’s and media have reported countless cases of illegal construction in Kosovo. One proof for this is the Map of Urban Irregularities in the Historic Centre of Prizren.²¹

Days ago, the Ministry of the Environment and Spatial Planning published a draft of the Administrative Instruction for Basic Health and Safety Needs for treating Illegal constructions, based on the Law on Treatment of Illegal Constructions which has been in force since 5 February 2014. Concerning the Law on Treatment of Illegal Constructions as well as the Administrative Instruction, there is a lack of required attention over certain aspects that are related to the architectural heritage and protected zones. According to Article 12, item 2.7 of the Law, among others prescribes that: “Inspections of illegal construction should determine that the Applications for legalizations shall be refused if, after inspection, the competent body finds it is built in the protected zones and special zones of cultural heritage”.²² The Law on Cultural Heritage and the Law on Spatial Planning defines a protected area as “an area which may include protected natural or environmental resources, or immovable cultural heritage as defined in Article 2 of Law on Spatial Planning No. 2003/14, which is surrounding the perimeter of protected immovable cultural heritage that may be safeguarded from any development or activity which could damage the visual setting or otherwise damage the cultural heritage” (Article 2.21). Also the Law determines that “architectural monuments under

21 EC Ma Ndryshe, Map of Urban Irregularities in Prizren at <http://www.online-transparency.org/harta/>

22 Official Gazette of Kosovo, Law on Treatment of Illegal Construction at <http://gzk.rks-gov.net/ActDetail.aspx?ActID=8990>

temporary or permanent protection have a protective buffer, which is 50 meters from the perimeter of the monument” (article 6.4).

Along with the Administrative Instruction the draft of which has been published, and which is related to the Basic Health and Safety needs for Treating Illegal Construction, a very important detail is also the regulation for issues that are related to illegal constructions close to cultural heritage buildings (protected zones). The process of legalizing illegal construction is a very good opportunity for cultural heritage, which, if used adequately, may save it from further degradation. For this reason, MESP, MCYS and municipalities of Kosovo need to be strict in the implementation of Article 12 for legalization, which prevents legalization of illegal constructions within protected and special zones of cultural heritage.

About EC Ma Ndryshe

NGO EC Ma Ndryshe was established in March 2006. The main goals of the organization are to promote participatory and active citizenship and raising public awareness for the protection and cultivation of cultural heritage. EC Ma Ndryshe (Walk differently) is among the founding members, representing Kosova in the South East European Network of organizations working in cultural heritage – SEE Heritage Network. It is also the founder and leader of the Prizren Cultural Heritage Forum and the Network of Culture Organizations of Prizren. Recently EC Ma Ndryshe was among the founding members of the Cultural Forum - Network of Independent Culture Organizations in Kosova. Since its establishment, EC Ma Ndryshe has continuously exercising direct pressure on local government in Prizren to enable the access of the civil society and the citizens for joint decision-making. Apart from the direct participation in public consultation, EC Ma Ndryshe has been advocating on regular basis about the need to respect legal obligations for public consultation, the wide inclusion of communities in public consultation and the need to include concerns and necessities of the community in the public policy documents.

Main projects of the organization: Urbanism Watch – Cultural and urban activism in Prizren (2014 – 2015), Linking communities to justice providers (2014), Urbanism of Prizren under scrutiny (2013 – 2014), Online transparency of Prizren, Mamusha and Prishtina municipalities (2013 – 2015), Public participation through social media in Prizren and Gjilan (2013 – 2014), Inclusive city – participatory urban planning for sustainable urban development in Prizren (2013 – 2015), Cultural Heritage, the central pillar of sustainable local and regional development in Prizren (2013 – 2014), Culture Volunteers (2012 – 2013), Public participation in local cultural policies (2012 – 2013), Online transparency of Prizren municipality (2012 – 2013), The civil society’s role in promoting cultural heritage (regional project, 2011 – 2013); A Balkan tale, the Otoman heritage in the Balkans (regional project, 2011 – 2013); Raising the cultural awareness among the young people through documentaries (2010); Strengthening of civic activity in promoting and protecting the Cultural Heritage (2009); the “Culture 2013” Platform (2008-2009), Restoration Camps (2007, 2008 & 2009); Open citizens’ Forums (2007); Days of European Heritage in Kosova (2006, 2007 & 2008); The Prizren Orchid Song Festival (2006).

Publications: Guide to Municipal Transparency (2014), Laws are short of protecting

Historic Center (2014), Reading the city through urbanism (2014), Historic Center of Prizren – an (un)protected area (2014), Inclusive City (2014), Who guards the guardian – accountability of civil society in Kosova (2013), Youth and Transparency – excluded or ignored? (2013), Urban planning for citizens (2013), “Prizren, cultural city”, documentary film (2013), Public participation on drafting of cultural policies in Prizren (2013), Erroneous – an analysis of numerous and continuous faults in cultural heritage (2013), Four analysis of the project “Online Transparency”: 1. Natural and Urban Degradation, 2. Adherence to the law in local governance, 3. Good governance is not a buzzword (2012), 4. Transparency of local governance in Prizren (2012), Silent Balkans, documentary film (2012), Cultural Life in Prizren Municipality (in cooperation with the ODA Theater, 2010-2011), Low Cost Intervention (2009), Voluntarism and Cultural Heritage (2009), Prizren in Retrospect (comparative photo-catalogue of Prizren, 2009), Strategic document on Organizing the Days of European Heritage in Kosova (2008); Cultural Heritage and Tourism in Prizren (2008).



Copyright © Ec ma Ndryshe.

This study has been developed by the Ec Ma Ndryshe supported by the Kosovo Foundation for Open Society (KFOS). The opinions expressed do not necessarily represent the opinions of the Foundation.

For more information:
www.ecmandryshe.org
www.kfos.org