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The application of the Recommendation on the Historic Urban Landscape in terms of the limits of acceptable change

1. Introduction

It is almost ten years since the Recommendation on the Historic Urban Landscape (hereinafter: the Recommendation) was adopted by UNESCO on 10 November 2011. The Preamble of the Recommendation states the fact that, despite existing valid “standard-setting documents, including conventions, recommendations and charters” that protect historic areas, common, across-the-board phenomena are currently influencing the continuous development of cities that is not always positive. As a result, cities are subjected to expansion pressure, under which it is more and more difficult to cope with the task of preserving historic urban areas. Therefore, there was a need to summarize, rethink, and fill in the gaps in approaches to historical urban area protection.

While society recognizes the inevitability of irreversible, rapid urbanization, failures to safeguard historical cultural layers should not be allowed since urbanization and historical layers together shape today’s cities and societies. It is not only individual architectural monuments that are included in the frameworks of urban areas that should be protected. We are in a new era in which we need to work on protecting larger areas “as the result of a historic layering of cultural and natural values and attributes, extending beyond the notion of ‘historic centre’ or ‘ensemble’ to include the broader urban context and its geographical setting” (part 1, art. 8 of the Recommendation).

This topic is also under especially close scrutiny in light of the United Nations recently adopting new approaches regarding the urban process, the protection of urban heritage, the control of development processes, and the establishment of sustainable environments that are also directly related to urban area environments. The Sustainable Development Goals (SDG)¹ and the New Urban Agenda – Habitat III are the basic,

¹ In this case, attention is focused on Goal 11 – “Make cities and human settlements inclusive, safe, resilient and sustainable.”

modern instruments to disseminate and establish a vision of the global society toward the current and future environment. Moreover, these documents form the foundation of the modern sustainable city, including provisions which cover people's current concerns about the position of cultural heritage (which is, in most cases, included in the frameworks of urban areas) and the cities' own views on the urbanization process and their future.²

National governments have already begun implementing the rules and continue to do so today with a focus on the practical usage, methodology, and management of historic urban landscapes (hereinafter: HUL). In many cases, however, investigation into existing national legislation and methods of legal implementation is insufficient, which leads to misunderstandings and differences in approaches from country to country. Consequently, the limits of acceptable changes and the understanding of the scope of necessary preservation varies in different jurisdictions, countries, and societies. Varied understandings of the concept and the lack of work on harmonizing existing national legislation to international approaches has endangered parts of historical urban landscapes that are recognized internationally as cultural heritage, and they might be lost irrevocably.

In one of the most expansive works in the field of the HUL written by Francesco Bandarin and Ron van Oers, the concept of HUL in general is observed together with several questions concerning current issues in this field that remain unresolved. One of them regards the management of change: "Social, economic and physical changes tend to be seen as an alteration of the values to be preserved. As a consequence, both principles and practices are not adequately equipped to define the limits of acceptable change, and the assessments tend to be ad hoc and subjective. (...) Specific approaches need to be developed for the management of change in the field of architecture, infrastructure, public space and uses of existing buildings"³

Even though the focus was directed toward the management of limits, together with the architectural approach, there also should be appropriate legislation in order to successfully specify the methods.

Therefore, the aim of the current work was to examine the provisions and specific terms of the Recommendation that might be used as tools to limit changes in frameworks of urban areas. This work also investigates the current legislation of several countries that were mentioned in the UNESCO Recommendation on the Historic Urban Landscape. Report of the Second Consultation on its Implementation by Member States, 2019 that have already started implementing the Recommendation into their national legislative frameworks.

² F. Ahmadi, S. Toghyani, "The Role of Urban Planning in Achieving Sustainable Urban Development", *OIDA International Journal of Sustainable Development* 2011, vol. 2, no. 11, pp. 23–26, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1980454 (accessed: 4.05.2021).

³ F. Bandarin, R. van Oers, *The Historic Urban Landscape. Managing Heritage in an Urban Century*, Wiley-Blackwell, Chichester 2012.

2. The vision of limits of change and achieving legal implementation

The Recommendation is an additional tool for existing international legal frameworks that attempts to navigate today's obstacles in the urban heritage struggle in the ongoing race of transformations within them. As an instrument of soft law, it is difficult to ask for immediate modifications according to the new vision established by the Recommendation. Even though we might believe that, as an isolate asset, urban heritage is under well-regulated protection, we are still in the process of refocusing on a new, landscape-based approach⁴ that embodies the idea of maintaining the original landscapes and patterns of cities. This means that not only historic centers should be protected, but also the larger scale social and economic layers of cities. Legal regulations, which might still be considered weak and insufficient, play a significant role in this process.

One of the most difficult questions that has yet to be thoroughly discussed, especially from a legal perspective, is that regarding the limits of changes that are allowed. This refers not only to changes in the physical construction of individual monuments, buildings, and ensembles but also to whole patterns of cities that include the cultural, social, and intangible aspects of built heritage. To date, the idea and purpose of cultural heritage has been to preserve and keep structures without making any changes if possible. The landscape-based approach also does not mean that all changes are permitted, rather it is the transformation of historical and cultural patterns of cities to meet the current needs of societies while maintaining their historical essence.

Therefore, one of the main challenges and purposes is to find a balance between transformation processes and the historical essence of landscapes where legal regulations put this balance into frameworks and let practitioners make them perform. As the Recommendation is an additional tool to existing ones, together with it, in order to create a picture of to what extent the Recommendation introduces limits of change, it would be helpful to review previous documents that refer to urban issues.

First, it is necessary to understand the terms we encounter within the framework of this question. Change, limits, and historic urban landscape are the essentials of decision-making processes.⁵ Even though the Recommendation has already introduced the current, widespread vision of the HUL principle (which, it should be noted, is not a new category of heritage type, but a specific approach), there are things that remain unclear such as in what way national policies should move in order to follow requirements, what is the scope of HUL, etc.

⁴ L. Veldpaus, A.R. Pereira Roders, B.J.F. Colenbrander, "Urban Heritage: Putting the Past into the Future", *The Historic Environment*, April 2013, vol. 4, no. 1, pp. 3–18, <http://orcp.hustoj.com/wp-content/uploads/2016/12/2013-Urban-Heritage-Putting-the-Past-into-the-Future.pdf> (accessed: 1.05.2021).

⁵ C. Nahoum, *Urban planning conservation and preservation*, McGraw-Hill Professional, New York 2001.

3. The Venice Charter

The Recommendation is not the first international document to raise the issue of landscape protection that also introduces urban terms and limits on change concerning heritage. Article 1 of the Venice Charter, adopted by ICOMOS in 1965, declares the necessity of including the “urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event (...) or which have acquired cultural significance with the passing of time.”⁶ This can be considered the first mention in an international document of the issue of the scope of protection. Despite including as one of the functions of conservation “making use of monuments for some socially useful purpose,” the charter still focuses mainly on conservation and preservation issues pertaining to individual monuments rather than providing them with one more chance to “be alive” for society.⁷ But here we clearly understand that there is already a recognition of the larger scale that needs support in addition to individual buildings.

The limits of change are related to individual constructions, and it is strictly established that no “new construction, demolition or modification which would alter the relations of mass and color” or “traditional setting,” this could simultaneously be applicable to a larger scope, especially considering the fact that HUL includes traditional settings and visual aspects. However, art. 7 introduces the concept of “public interest” where exceptional changes might have a place even in protected areas, if “it is justified by national or international interest of paramount importance.” We struggle with the issue of what can be interpreted as being of “paramount importance” specifically when we are talking about urban areas that should provide sustainable, comfortable environments that satisfy current societal needs, and defining the framework is the responsibility of each state. Therefore, without specific clear limits or smoothly working mechanisms for regulating them, it is difficult to build sustainable environments in both short- and long-term perspectives.⁸

One example we can refer to is that of Russian Federation legislation concerning land and property control. The appropriation of plots of land, including through redemption for state and municipal needs, is conducted in accordance with art. 49 of the Land Code of the Russian Federation,⁹ in exceptional cases related to: 1) the fulfillment

⁶ International Charter for The Conservation and Restoration of Monuments and Sites. 2nd International Congress of Architects and Technicians of Historic Monuments, Venice 1964, accessible at: https://www.icomos.org/charters/venice_e.pdf (accessed: 20.03.2021).

⁷ N. Akagawa, T. Siririsak, “The current issues on urban preservation in Bangkok”, The 2005 World Sustainable Building Conference, Tokyo, 27–29 September 2005, <https://www.irbnet.de/daten/iconda/CIB4150.pdf> (accessed: 26.04.2021).

⁸ M. Glasser, S. Berrisford, “Urban Law and Policy. A Key to Accountable Urban Government and Effective Urban Service Delivery”, *World Bank Review* 2015, <https://www.irbnet.de/daten/iconda/CIB4150.pdf> (accessed: 5.05.2021).

⁹ The Land Code of the Russian Federation from 25.10.2001 N 136-FL, accessible at: http://www.consultant.ru/document/cons_doc_LAW_33773/ (in Russian) (accessed: 20.03.2021).

of international obligations of the Russian Federation; 2) the placement of objects of state and municipal importance in the absence of other options for the possible placement of these objects; 3) other circumstances established by federal law.

There are plenty of cases when buildings in the vicinity of national cultural heritage (not all national heritage has the requirement of buffer zones) were appropriated by governments for “state needs.” This can also happen with other architectural monuments that are of historical value, but, for various reasons, are not yet classified as cultural heritage sites under government protection. However, they are still located in specific historically and culturally valuable areas and are classified as such by local organizations working in the field of cultural heritage protection. These buildings, of course, create the necessary historical urban landscape and the cultural pattern of space.

However, according to art. 56.4 of the Land Code, officials can also appropriate land on the initiative of organizations, a complete list of which is approved by the Government of the Russian Federation. In order to seize land, a organization must submit a petition to the authorities. These organizations include, in particular, subjects of natural monopolies in the case of seizure of plots of land for placement; these ensure the activities of pipeline facilities, power plants, infrastructure facilities, public railway transport, and communication lines and structures. Thus, we can see, how the “public interest” of constructing appropriate infrastructure for social needs can turn into the “legal” demolition of urban spaces.

4. The Nairobi Recommendation

Although based on earlier international instruments,¹⁰ the next document that is considered as the foundation of the current landscape-based approach is the Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (referred to below as the Nairobi Recommendation)¹¹ from 1976, which introduced the following definition: any groups of buildings, structures and open spaces including archaeological and paleontological sites, constituting human settlements in an urban or rural environment, the cohesion and value of which, from the archaeological, architectural, prehistoric, historic, aesthetic or sociocultural point of view are recognized.

It sets forth the purpose of historic areas and, most importantly, it links it to urban planning and land development, which is the foundation of the protection process of any heritage type.

¹⁰ The Recommendation on International Principles Applicable to Archaeological Excavations (1956), the Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (1962), the Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968), and the Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage (1972).

¹¹ http://portal.unesco.org/en/ev.php-URL_ID=13133&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed: 20.03.2021).

Part IV – Safeguarding measures includes recommendations on harmonizing legislation on safeguarding historic areas, land development, urban planning, public service mechanisms, and financial instruments that are considered to be concrete actions and can be implemented by national legislations. As well as designating historic areas and their surroundings as “forming an irreplaceable universal heritage” “in their totality” while ensuring that “views from and to monuments and historic areas are not spoilt and that historic areas are integrated harmoniously into contemporary life” concludes this quite full regulation framework.

Moreover, if we refer to the “Technical, economic and social measures” section, we find a detailed description of what should be avoided during the development of historic areas (i.e., what limits should be established) as follows:

- [to formulate town-plans] with architectural, economic and social considerations and of the ability of the urban and rural fabric to assimilate functions that are compatible with its specific character;
- in historic areas containing features from several different periods, preservation should be carried out considering the manifestations of all such periods;
- removal of extensions and additional storeys of no value, (...) [buildings surrounding heritage,] demolition of recent buildings which break the unity of the area may only be authorized in conformity with the plan;
- particular care should be devoted to regulations for and control over new buildings so as to ensure that their architecture adapts harmoniously to the spatial organization and setting of the groups of historic buildings (...) harmony of heights, colors, materials and forms, constants in the way the facades and roofs are built, the relationship between the volume of buildings and the spatial volume, as well as their average proportions and their position;
- the isolation of a monument through the demolition of its surroundings should not generally be authorized, neither should a monument be moved unless in exceptional circumstances and for unavoidable reasons;
- historic areas and their surroundings should be protected from the disfigurement caused by the erection of poles, pylons and electricity or telephone cables and the placing of television aerials and large-scale advertising signs.

Examples of regulations that have been introduced and are working concerning the successful control of building characteristics, especially with regard to corrections of landscapes the integrity of which has been disturbed by “electricity or telephone cables” or “advertising signs” mentioned in the Charter are found in current Japanese legislation.

Together with the Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter 1987), and other international instruments up to 2011, an approximate vision was gradually established of what criteria should be used in order to limit changes in historic urban areas. According to art. 8 para. 3 of the Town Planning Law (from 1968 N100), all construction actions should be adopted by specific town plans that are approved by responsible committees that must follow limitations concerning urban landscape design establish by law, such as: area, height of building,

color, location, type of building, and materials. Detailed limitations vary among city rules since detailed plans are approved at the city level. However, according to art. 62 of the Town Planning Act, any violation of the form of design restrictions of buildings in the landscape district is punishable as follows:

- imprisonment for up to one year (art. 100);¹²
- fines of JPY 500,000 (\$ 5,000) or less (art. 100);
- suspension of construction or correction order (art. 64 para. 1);
- construction supervisors and designers of buildings in violation;
- disposition of business suspension (art. 65 para. 2).¹³

The same punishments are applicable if construction is suspended or the correction order is violated.

5. The Recommendation of 2011

Until 2011, there was no common, integrated approach on how to combine the diverse ideas that are presented by various charters and other recommendations. Therefore, the Recommendation of 2011 is the obvious result of what was accomplished in this field previously, and it is a combination of all the ideas. The resulting document is an advanced vision of historic urban landscape safeguarding.¹⁴

The continued development of the idea was embodied in the Guidelines¹⁵, the purpose of which is to help with the implementation of the Recommendation by distinguishing six steps that must be achieved first in order to fulfill obligations to protect HUL. Two of the steps, which can mostly be linked with legal regulations concerning limitations, are: 1) reaching a consensus on what values to protect and determining the attributes that carry these values; 2) assessing the vulnerabilities of these attributes to socio-economic stress and climate change and creating systems to provide protection from these stresses that lead to necessary transformations. Consequently, through these steps and basic tenets of the Recommendation together with all previous international tools that strengthen and support the HUL approach, we are entering a new period in which we need to look carefully at what has already been accomplished in the implementation of the HUL approach at national levels.

¹² J. Song, "The Origin and Evolution of Urban Heritage Conservation in the Specified Block System in Tokyo", *Journal of the City Planning Institute of Japan* 2017, vol. 52, no. 2, pp. 135–144, https://www.jstage.jst.go.jp/article/journalcpj/52/2/52_135/_pdf (accessed: 5.05.2021).

¹³ The Town Planning Law of Japan (from 1968 N100), accessible at: <https://elaws.e-gov.go.jp/document?lawid=343AC000000100> (in Japanese) (accessed: 25.03.2021).

¹⁴ Y. Erkan, "The Way Forward with Historic Urban Landscape Approach towards Sustainable Urban Development", *Built Heritage* 2018, vol. 2, no. 4, pp. 82–89, https://www.researchgate.net/publication/341706117_The_Way_Forward_with_Historic_Urban_Landscape_Approach_Towards_Sustainable_Urban_Development (accessed: 5.05.2021).

¹⁵ The HUL Guidebook. Managing heritage in dynamic and constantly changing urban environments. A practical guide to UNESCO's Recommendation on the Historic Urban Landscape

How does the existing system work? What contradictions, misunderstandings, and inconsistencies do we need to overcome within the international vision to achieve the desired goals?

To date, two consultations¹⁶ have been organized on the implementation of the Recommendation by Member States that analyzed the results of surveys that are continually being conducted to document progress in this field. Two paragraphs are of particular interest: 1) Adoption of legislative and institutional frameworks and measures supporting the principles and norms of the Recommendation; 2) Terminology and definition of HUL. Based on the summaries of these questions, some countries have already introduced specific legislation concerning the protection of HUL; however, this survey does not afford us the opportunity to analyze how all legislation can be linked with the protection of HUL, whether or not it is harmonized, or to assess other issues pertaining to land regulations, administrative mechanisms, the interactions of private and public interests, etc.

Especially in urban terms, the results indicate there is huge gap in understanding on international and national levels because of the vast variety of definitions of urban areas, historic centers, and historic cities, the scopes of which should be defined in the regulation. The reasons are various, but one of them might be the lack of clear criteria and the quite wide understanding of the HUL approach introduced by the Recommendation.

Diversity ranges from no protection systems for historic urban landscapes (African countries, countries of the former Soviet Union),¹⁷ to the recognition of urban areas as just “monuments, sites or ensembles” (Netherlands, Portugal, etc.) to quite wide-ranging, strong protection systems of historic conservation areas (Czechia), and also various, separate approaches to historical built-up areas, historically set environments, and urban fabric (Georgia).

6. Conclusions

While we have international instruments that establish a vision and disseminate ideas, many questions remain regarding how this should work in practice and how it should be implemented within legal frameworks. The most important idea raised by the Recommendation is the scope of what should be under protection from now on, and generally what the idea of protection from today’s perspective means. This does not just refer to preserving and saving HUL from any changes, but it emphasizes trying to strike a balance between transformation and preservation. That is why it is even more impor-

¹⁶ The UNESCO Recommendation on the Historic Urban Landscape. Report of the Second Consultation on its implementation by Member States, 2019. UNESCO World Heritage Centre.

¹⁷ V.I. Safronov, “‘Urban planning restoration’ as one of the main methods of preserving World Heritage sites in the context of its development. Cultural heritage in Russia – problems and perspective”. International Scientific Symposium, 19–21 September 2018.

tant now to distinguish clear limits on how we should move and transform the spaces around us. Previous international tools show us the foundation upon which the Recommendation of 2011 was created in a form that we can see right now and in a way that shows us how to continue to move forward. However, as the road is still meandering and has not yet cut a sharp path, national governments are losing their ways and moving toward the goal in very slow, small steps. Detailed analyses of current national legislation, their experiences, comparative studies and establishing a more concrete vision on the international level can all easily change this. This topic is still relatively new and requires more attention from a legal point of view to establish strong legal frameworks what will help the HUL approach function properly in the future.

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Summary

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The application of the Recommendation on the Historic Urban Landscape in terms of the limits of acceptable change

This article is a critical reflection on the application of the Recommendation on the Historic Urban Landscape adopted by UNESCO in 2011 as a basic concept for urban conservation in the

twenty-first century from a legal point of view. Despite the adoption of the recommendation and a few official reports on the implementation of it, there are still only a few countries that fully understand the crucial idea of the concept. The main purpose of this study is to illuminate the problematic points of the legal implementation of the Recommendation at the current stage, especially in terms of limits of changes that are equally acceptable at local and international levels. Standards remain unclear within the framework of existing international regulations concerning the protection of historic urban landscapes, and differences remain in particular terms that play significant roles in defining the scope of the influence of the Recommendation. Examining the text of the Recommendation and previous international tools related to the topic, reviewing the experiences of several countries that have already successfully started to implement the rules of the Recommendation based on official reports from UNESCO, and the study of current obstacles will help us to see clearly how the international community might start to move to achieve the universal goal of protecting historic urban landscapes.

Keywords: Recommendation on the Historic Urban Landscape, urban heritage, international law, implementation of international law

Streszczenie

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Implementacja Rekomendacji UNESCO w sprawie historycznego krajobrazu miejskiego w kontekście granic dopuszczalnej zmiany

Artykuł jest prawną analizą implementacji Rekomendacji w sprawie historycznego krajobrazu miejskiego, przyjętej przez UNESCO w 2011 roku jako podstawowej koncepcji ochrony obszarów zurbanizowanych w XXI wieku. Pomimo przyjęcia Rekomendacji i publikacji kilku oficjalnych raportów na temat jego wdrożenia, w rzeczywistości niewiele jest państw, które w pełni uchwyciły kluczową dla tego dokumentu ideę. Celem niniejszej analizy jest zwrócenie uwagi na najbardziej problematyczne kwestie prawne pojawiające się przy implementacji, zwłaszcza w odniesieniu do kwestii granic dopuszczalnej zmiany na poziomie lokalnym i międzynarodowym. Standardy wynikające z ogólnych reguł prawa międzynarodowego na temat zachowania krajobrazu miejskiego pozostają niejasne, a różnice co do znaczenia poszczególnych postanowień wpływają na rzeczywisty zasięg skutków, jakie Rekomendacja wywołuje. Analiza samej treści dokumentu w połączeniu z brzmieniem wcześniejszych instrumentów prawnych w tej dziedzinie, oszacowanie dotychczasowych doświadczeń państw, które według oficjalnych raportów UNESCO rozpoczęły implementację Rekomendacji, oraz prześledzenie aktualnych praktycznych problemów — wszystko to pozwoli na ocenę, jak społeczność międzynarodowa zamierza chronić historyczne krajobrazy miejskie.

Słowa kluczowe: Rekomendacja UNESCO w sprawie historycznego krajobrazu miejskiego, historyczny krajobraz miejski, prawo międzynarodowe, implementacja prawa międzynarodowego