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HERITAGE PROTECTION VERSUS INDIVIDUAL INTERESTS IN A POST-SOCIALIST COUNTRY: THE CASE OF MŠENO, CZECH REPUBLIC

Abstract. Large-scale investment is routinely believed to be the main danger to urban heritage. The measures designed to sustain heritage thus traditionally focus on steering investment into respectful ways of real-estate development. The majority of Czech built heritage is, however, located in towns and villages that rather face economic decline. Losses of objects of heritage in such places are often due to lack of maintenance. The case study of this article discusses the issues of heritage protection and restoration of the Enlisted town zone of Mšeno, where affordability and communication of values are the key issues in heritage protection.

Key words: planning, heritage, remote areas, public participation.

1. INTRODUCTION

1.1. The Legal Environment of the Czech Republic

The legislative system of the Czech Republic is based on the continental (Roman) tradition, where the legal system is defined by relatively detailed normative acts approved by representatives of the people, which are further interpreted either by the executive power of the Republic, or by the findings of the judicial power of the Republic (Czech Constitution, 1993). These normative acts are subsequently executed by the bureaucratic apparatus of the state. Its hierarchical organisation was broadly inherited from the former Austro-Hungarian Habsburg Monarchy, which has been altered by the various regimes that have succeeded, yet these have kept the overall structure relatively intact (Malý, 1997). The execution of the nor-

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mative acts in the Austro-Hungarian tradition includes publishing instructions for interpretation of the normative acts, so that the officers do not interpret the laws by themselves, but merely apply the instructions as provided by their respective ministries.

The country as a whole is further sub-divided into regions and communities that possess both legal and executive powers to self-govern themselves, the latter being the smallest self-governing units of the Republic. As some of the communities are as small as a few dozen people, they indeed do not have sufficient personal capacity to realize their executive power. This was the reason why executive powers have been granted to a selection of 200 communities, of which the majority are traditional local centres (referred to as municipalities with extended powers), where the base-level bureaucratic apparatus is located. The system expects that there are no overlaps between agendas of the different ministries, so that contradicting interpretations of the protected phenomenon are avoided.

1.2. Spatial Planning

The system of Czech spatial ('territorial') planning conforms with and builds upon this structure of public administration. It is realized through a hierarchy of legally binding planning documents and the respective Planning Offices responsible for their execution, with the tiers corresponding to the spatial sub-division of the Republic into the self-governing units.

This is to achieve the two tasks spatial planning is expected to fulfil. The first is to coordinate spatial development of the society so that the expressed needs of the population of the territory are fulfilled providing they do not threaten sustainability of the territory. The second is to coordinate the spatial imprint of nationwide policies.¹

(3) The authorities of the town and country planning coordinate, by means of a procedure pursuant to this Act, the public and private programmes of changes in the area, construction and other activities influencing the development of the area, and putting the protection of public interests arising from special regulations in concrete terms (§18/3 Planning and Building Act No. 183/2006).

The process of procurement of the legally binding planning documents is designed so that the public has a reasonably strong voice and the requirements posed by the nation-wide policies are respected. The planner has to develop creative solutions, which address the requirements of the public (in as much as it is possible²) within the frame that is set by the national policies and hierarchically higher bind-

¹ Such as landscape and nature protection, water resources protection, environmental hygiene, management of mineral resources, national heritage protection and others.

² The planner has to justify his decisions in all cases when he does not fulfil the call.

ing planning documents. During the public deliberation of the plan, the planner needs to come in terms with the executive power (as, of course, the plan has to obey the law).

After the planning documents have been approved by the respective (regional or local) councils, they are binding for any intended change of land use, particularly for all development investments, which is executed by the respective Planning Offices.³

In order to assure the different values and public interests are known prior to the plan procurement itself, the 'Planning Analytical Materials' were introduced to the system of planning. These must cover all protected areas (including those of nature and landscape protection, such as 'significant landscape components') when the respective authorities are required by law to deliver to the planning office. Besides those, the Act has obliged the Nature Protection Authorities to delineate and describe so called 'places and areas of landscape character' (MLRD, 2006), which aims at greater transparency of the approval process.

1.3. Landscape and Monument Protection

An expert, top-down and repressive approach is the traditional form of Czech public administration.

Monument protection developed through isolated legal actions until the end of World War II, when the first attempt to institutionalize it was made by the National Commissions for Culture Act No. 137/1946. The need for such an act was necessitated by the vast numbers of monuments that were nationalized during the process of expropriation of Germans and collaborators with the Nazi regime. The Nature Protection Act No. 40/1956 introduced the protection of landscape aesthetic values, yet the context of the act works specifically with the term 'nature' in regard to landscapes (i.e. ecosystems, water and air quality). Two years later, monument protection was systemized through Monument Protection Act No. 22/1958. The re-enacted Monument Protection Act No. 20/1987 and the Act on the Conservation of Nature and Landscape No. 114/1992, which are still in power, generally inherited the system of administration from their predecessors. The main difference was that the original Institute for Monument and Nature Protection, as an organisation providing support in expertise for both, was disintegrated into the National Heritage Institute for monument protection and the Nature Conservation Agency of the Czech Republic for landscape and environmental protection.

The reason why landscape protection is discussed together with monument protection is twofold. First, the 1992 Act on the Conservation of Nature and Land-

³ The approval of the planning office is conditioned by an approval by all executive offices whose areas of interest are affected by the proposed investment.

scape has introduced a new landscape agenda by the requirement for the authorities of nature protection to protect landscape character, to which historical and aesthetic values are also relevant:

(1) The landscape character of a place or area shall be its natural, cultural, and historical character, and it must be protected from activities that reduce its aesthetic and natural values. Interference in the character of a landscape, especially the approval and placing of buildings may be carried out only with regard to the preservation of significant landscape components, specially protected areas, and cultural landscape landmarks, and for harmonious standards and relations within a landscape (§12/1, Act No. 114/1992).

Having distinguishing so called ‘general’ and ‘special’ nature and landscape, certain territories of ‘special’ nature and landscape protection (the so-called Protected Landscape Areas, PLA) are dedicated to protect values of cultural landscapes. As a result, as those landscapes comprise artefacts and structures of both (and often combined) natural and cultural origin, the realisation of the ‘special’ nature and landscape protection often includes areas that are recognized by the monument protection as well. Besides other reasons, this tendency of nature and landscape protection to overstep into built up areas derives from the very definition of landscape in Czech law, which defines the term ‘landscape’ as follows:

(k) A landscape shall mean a part of the Earth’s surface, with a characteristic relief, formed by a complex of functionally integrated ecosystems and elements of civilization (§3, Act No. 114/1992).

Thus the nature and landscape protection has to (by law) encroach into the domain of the monument protection bodies of Czech administration, thus corrupting the basic bureaucratic expectation that one phenomenon is administered by a single body. To make things even less transparent for the end user (the citizen), monument protection recognizes so called Enlisted landscape areas, which are landscapes of a high historic value (e.g. well preserved medieval landscape structure).

There indeed is an objective reason for the encroachment of (special) landscape protection into the fields of monument protection. Enlisted monuments and areas are typically too scattered to provide enough grounds for protection of character of landscapes. Thus the PLA management needs to influence the built up areas, where monument protection is not present.

1.4. Planning Process

Since 2006, the official planning system of the Czech Republic recognizes three levels of planning procurement and realisation. Planning offices are required to prepare analytical documents that comprise (among others) the requirements of monument and nature and landscape protection. Subsequently, when the plans are

enacted, the planning office issues planning permissions. During the plan procurement, planning offices oversee the process of the procurement. Nevertheless, it is an exception for the planning offices to actually create the plan.

The detailed regulatory plans are relatively scarce. Plans, on the other hand, consider organisation of uses of the land within the municipality. As such, the authorities may express themselves about the extent of the development only.

Based on the above, for any planning permission an approval of either the Monument Protection Authority or the Nature Protection Authority, eventually both, is a pre-condition for planning permission issued by the respective Building Authority (Act. No. 183/2006). Both of these authorities are seated in the offices of the ‘municipality with extended powers’, which is responsible for base-level state administration within its territory. Both have two superior levels, their direct superior seated with their respective Region and either the Ministry of Environment or the Ministry of Culture as the central authority. The above-mentioned National Heritage Institute and the Nature Conservation Agency are expected to provide them with expert consultancy.

The position of the areas with special status (nature parks or protected landscape areas) in nature and landscape protection is somewhat exceptional, for their

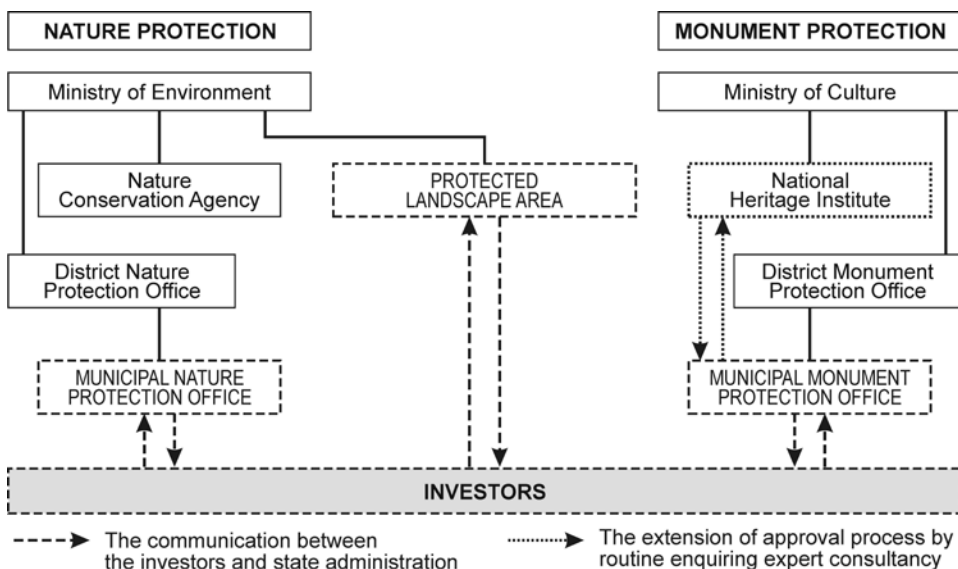


Fig. 1. Outline of the approval process for planning permits in the fields of nature protection (left) and monument protection (right)

Source: authors' elaboration based on Czech legislation

management serves as the approval authority (working besides the general Nature Protection Authority) and is subordinate only to the Ministry of Environment.

As a rule, the owner of a property in an area subject to monument protection is responsible for any changes to his property to be delivered properly (i.e. abiding by the law). Failure to this may lead to relatively severe punishment.⁴ As the law does not prescribe any universal rules of 'proper practice', it is typically the monument protection officer with whom the owner must come to terms (§14 of Act No. 20/1987). It is very difficult to foresee the demands of the Monument Protection Authority when planning a reconstruction of either a registered monument or a general property within Enlisted Town Zones. The approval process resembles blind shooting both for the investor and surprisingly even for the Ministry of Culture itself (Legislative Commission of Czech Government, 2013). This is because the interpretation of what may be considered an interest of the monument protection is quite vague. This is partially due to the fact that Enlisted Town Zones have been registered by the ministry in waves of multiple zones at a time (in 1987, 1990, 1995, 1996, 2003 and 2004), which indeed (unlike it was with the PLAs) does not allow for thorough description of each one of them (Legislative Commission of Czech Government, 2013).

2. MATERIAL AND METHODS

The information published in this paper is derived from semi-structured interviews with the representatives of the municipality, analyses of available documents on the Enlisted Town Zone of Mšeno and materials published and distributed by the opposition to the enlistment of Mšeno as a heritage site. The interviews were conducted in the period between 2010 and 2014 as one of the authors' workload as a commissioner in the Commission for the Reconstruction of Mšeno Enlisted Town Zone. As such, the interviews cover the reactions of the local population in the period comparatively long after the Ministry of Culture has registered the Enlisted Town Zone of Mšeno in 2003. Nevertheless, the case appears to be still vivid among the local population.

The interviewees fall into three distinct groups. The first and most numerous are the homeowners, the second are representatives of the municipality (the mayor, the members of the Commission for the Reconstruction of Mšeno Enlisted Town Zone and the members of the City Council) and the third the representative of the Monument Protection Authority.

⁴ §39 of the Monument Protection Act No. 20/1987 allows the municipality with extended power to assess a private person with a fine at up to 2,000,000 CZK/ 70,000 EUR plus the cost of reconstruction, which is roughly the cost of a decent house in the countryside.

As for the first group, open interviews were conducted with around a hundred of interviewees during the above – indicated period. As an addition to the open interviews public hearings on the ETZ at the City Council were analyzed. A typical respondent of this group is a local inhabitant seeking to improve his/her private home, trying to minimize the cost of the reconstruction. As for the second group, 10 semi-structured interviews were realized. Typical interviewee of this group would recognize heritage as a value in itself as well as its importance as a symbol of continuity for the local population. There was one representative of the Monument Protection Authority in service and therefore interviewed during the period of preparation of this article.

3. CASE STUDY

Mšeno is a small town some 70 km to the north from Prague. It is built over a little creek in a place where the flat agricultural landscape of Pojizeří meets the dramatic sandstone landscape of Kokořínsko. It is generally assumed that the history of human habitation in Mšeno is very long, thanks to the proximity of fertile soils, well defensible landscape and relatively scarce water resource. While the first written evidence of the town existence comes from 1080, archeological site of a (pre) Slavonic fortification in its close quarters indicates a history much older than that (Kuča, 2001).

Through its history, Mšeno developed an intricate urban structure. It is believed that the original settlement was a rural village, now called Podolec, to which a new triangular town square was attached during the first half of the 14th century. The street connecting the town square with the original rural village evolved into a third main public space, especially after the old Podolec common was built up during the 17th and 18th centuries.

Most of the original wooden houses, as well as all of its most important buildings, were destroyed during massive fires of 1820, 1864 and 1867. Ambitions of the town to gain importance were hindered by its lack of rich enough resources of drinking water and remoteness from paved roads and railway lines, which were built no sooner than the second half of 19th century. Therefore, besides almost complete reconstruction of the burned town centre, the town has experienced only a decent growth during the 20th century.

As for now, Mšeno displays a unique and very well conserved urban structure, as well as its silhouette as viewed from the surrounding landscape. As such, the town centre, which is nearly the whole town, was registered as an Enlisted Town Zone (ETZ) in 2003 (Ministry of Culture, 2003) (figure 2). Almost all its buildings are the 19th century, there are just a few Enlisted Monuments within the zone

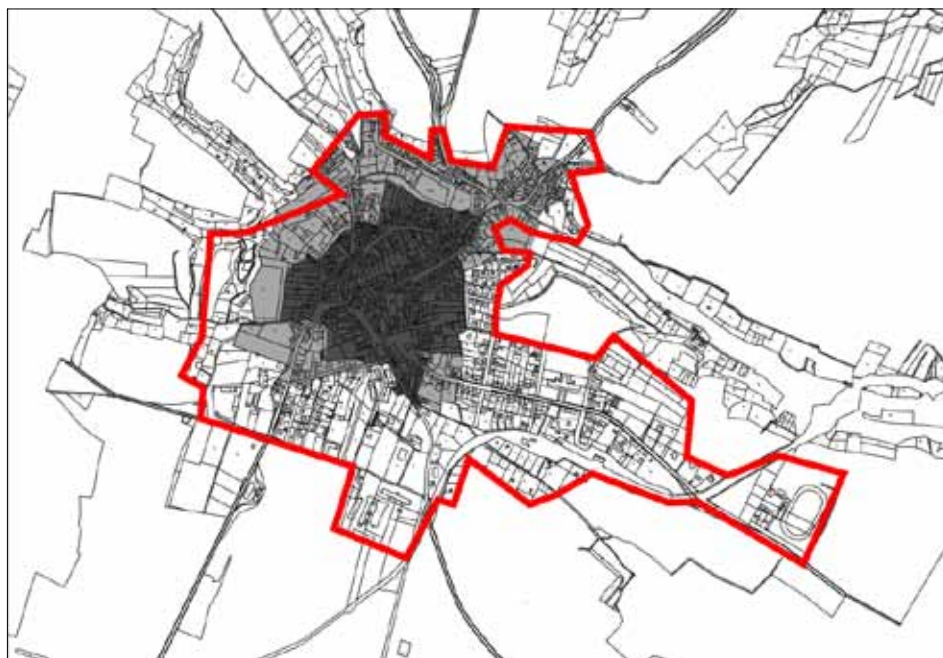


Fig. 2. Plan of the Enlisted Town Zone. It shows the core of the ETZ (in dark grey), the protection zone of the ETZ (grey) and the built up area of the town (solid line). As is clearly visible, the ETZ and its protection zone comprises substantial part of the town

Source: authors' elaboration based on background map Czech Office for Surveying, Mapping and Cadastre and Edict No. 108/2003

itself. Besides the ETZ, Mšeno is also included into the Protected Landscape Area (PLA) Kokořínsko. Any property owner thus needs to come to terms with both the Monument Protection Authority and the Protected Landscape Area Management.

Mšeno had become a part of the PLA Kokořínsko, enacted by the government of the Czechoslovak Socialist Republic in 1976. As the Czech legal definition of 'landscape' includes also urban environments (§3, Act No. 114/1992), the management of PLA already has a long experience in discussions with the landlords and homeowners. The PLA management pioneered (at least within the Czech Republic) publishing simple guidelines for investors, thus making the approval process relatively transparent (Maier, 2014).

Enacted by the Ministry of Culture in 2003, the ETZ of Mšeno is relatively recent. Within the zone, there are only five Enlisted Monuments of which four are public buildings (church, town hall and swimming pool) or street furniture (baroque statue of St. Mary) and one is a private home. Most buildings within the perimeter of the ETZ, therefore, do not enjoy any other form of monument protection. Unlike the PLA, the Monument Protection Authority had never published any form of guidelines.

4. RESULTS AND DISCUSSION

There was only a limited awareness of the new ETZ among the general public, although the ETZ was enacted with the agreement of the municipal representatives (Mach, 2011). As late as in 2006 the head of the ETZ Commission pointed out that ‘some citizens learned about the existence of the Enlisted Town Zone of Mšeno while planning reconstructions of their homes’ (Lejtnarová, 2006). This quote indicates the lack of information provided during the initial phase of the ETZ.

To make the communication towards the public more difficult, the Mšeno ETZ consists of buildings from late 19th century, so their architecture is far from being generally accepted to be worthy of monument protection, as is officially reflected by the number of Enlisted monuments within the ETZ. This, combined with the routine of the Monument Protection Authority, which typically focuses on isolated elements, has led to a growing misunderstanding between the local citizens and the Monument Protection Authority. To make things worse, the Ministry of Culture does distribute financial support to individual ETZs, yet these resources cannot be used on buildings within the zone that are not Enlisted monuments at the same time⁵ (Trevisan, 2014).

In 2005, in order to ease the tension between the ETZ, the Monument Protection Authority and the town citizens, the municipality founded a Commission for Regeneration of the Enlisted Town Zone. The commission employed members of the town hall, external experts, and representatives of the public and monument protection authority (Lejtnarova, 2006). Nevertheless, failing to fulfill its task it gradually lost its pace of work until halting for two years in 2008. The Commission was reactivated in a different personal composition only in 2010 (Mšeno, 2010).

As the mayor recalls, the Monument Protection Authority behaviour is often regarded as arrogant and equivocal (Mach, 2014). The custom to routinely ask for consultancy from the National Heritage Institute or Publishing Approvals that are deemed subjective by the public⁶ further hinders the informal authority of the officers among the local population. Besides involving experts even remoter to the local conditions than themselves, this practice leads to painstakingly long approval times, sometimes even longer than 3 months (Mach, 2014). Moreover, the management of protected landscape area employs utterly different approach, publishing simple principles for reconstruction and providing approval by its own means. The practice of monument protection towards the reconstructing home-

⁵ This is one of the reasons why the 2013 Programme for Restoration proposes 21 new structures to be enlisted (Pešta, 2013). Of those, 18 are private town houses and only 3 are public buildings. Besides those, the Programme for Restoration lists 23 buildings as very important for the character of the ETZ, of which 20 are private town houses and three are memorials.

⁶ Such as is the colour of facades, where the citizens suspect the Monument Protection Authority of ‘just liking grey’ (Mach, 2014).

owners has led to several waves of resistance towards the existence of the ETZ. The last, from 2011, calls for a local referendum to abolish the ETZ altogether (Hrdlička and Měšťáková, 2011).

A very bitter aspect of the relationship between the Monument Protection Authority and the Local People is the effect of the punishments imposed over the homeowners who failed to meet the requirements of heritage protection. As the mayor recalls, some of the town citizens were economically ruined by either the fines themselves or the need to change the reconstruction (Mach, 2014). As a result, mutual distrust grew between the Monument Protection Authority and the Citizens. The citizens' representatives were caught in the middle.

In this environment, the new Programme for Restoration of the ETZ is being prepared (Pešta, 2013). Unlike its predecessors, the new Programme for Restoration set itself three goals to achieve. The objective of the program, and probably its most challenging task, is to restore (or build) the citizens' identification with the object of the ETZ, which is the character of the town (Trevisan, 2014). Thus, it attempts to bridge the nearly ten years of lack of communication of the values protected by the ETZ that are not always clear to the town citizens. In order to achieve this, the program attempts to provide a comprehensive set of rules for behaviour within the area of the ETZ and thus enhance the transparency of the approval process for reconstructions. Besides this, the new Programme for Restoration introduces a Restoration Fund, aiming to support the individual owners of buildings in the ETZ in know-how and with finance from tight municipal budget (Pešta, 2013; Mach, 2014). The need for transparent redistribution of the scarce municipal resources between individual homeowners indeed requires a very detailed description of priorities within the Programme of Restoration.⁷

5. CONCLUSIONS

Protection of values in an environment of a living society is always a very delicate activity. Some conflicts arise from the simple fact that what is valuable for one person may not have any value to another (Hume, 1742); besides, they need to resolve their own inner value conflicts (Schwartz, 2013). Objects of values, including those that we theoretically all share, because our representatives have decided so, indeed are but one of these conflicting values. It is hardly imaginable that someone would wilfully damage something he values. The damage the people do to their (own) heritage thus just displays that they do not recognize it as a value

⁷ As, obviously, otherwise each homeowner receiving additional duties from either the ETZ or the PLA would require financial support, which is way beyond the capability of the municipality.

that can stand a competition with other values in stake. It is indeed possible to use power to make them undertake actions they do not agree with out of fear of persecution (and that is why it appears to be so successful).

What is particular for the case study is the class aspect of the conflict between the local people and the authorities. Rural populations in the Czech Republic typically distrust those who come to them from a faraway city. The monument protection officer coming into a rural town is automatically identified as a delegate 'of those above' and as such invited with caution (Grazuleviciute-Vileniske and Urbanas, 2014). This is in essence yet another example showing the aspect of different social value systems inherent to heritage protection. The monument protection officer comes to tell the locals what their heritage is (Chambers, 1997; Mowfort and Munt, 2003) and force it over other values they possess. Successful resistance to the authorities, especially when the general public regards monument protection a threat to their liberty and creativity (Kuča *et al.*, 2004, p.8) therefore often endow the resisting individual with a respect from the community, which presents a value in itself (Schwartz, 2013).

The first contact between the monument protection and the local community is, therefore, absolutely crucial for further development of a relationship between himself and the community (Ashworth, 1990; Orbasli, 2002; Aas *et al.*, 2004). Obviously, once the first wrong step(s) are taken, it is very difficult to regain trust and authority.

Resistance of the residents of Mšeno to the official protection of values they have inherited presents an illustrative case of miscommunication of historical values (see Ashworth and Kuipers, 2001). The academic discussion over whether it is the looks of the buildings or the construction or whether the restored environment should reflect a particular period or not (Larkham, 1996; Legislative Commission of Czech Government, 2013) is relatively harmless to the case of heritage protection as long as only a handful of (predominantly) public buildings are at stake. When it starts affecting wide public residing in buildings all of a sudden recognized as a heritage, it may damage the institution of monument protection itself (Aas *et al.*, 2004; Mach, 2014). Especially so when obviously controversial projects of strong investment receive permission from the authorities despite strong public resistance (Bečková *et al.*, 2011).

Built heritage is one of the fundamentals of local identity, as well as it is its product. The above-mentioned case has presented three main obstacles that may shape the acceptance of the institution of top-down heritage protection amongst the local population.

Firstly, the legislation defines vaguely what is to be protected by the Monument Protection Authority within the ETZ limits. It is therefore both the public and the officer who is left without guidance on what changes to the built environment may be accepted and which cannot. To overcome this, the law expects

the Commissions for Restoration of ETZs to Develop Regeneration Plans. This, although undoubtedly led by good intentions, unfortunately created a second obstacle. The Ministry of Culture failed to provide guidance on how the regeneration plans are to be developed, and how the Monument Protection Authority should act prior to the plan has been approved by the City Councils. The third obstacle is financial. Cost of refurbishment of any building that enjoys monument protection of any kind tends to be substantially higher than that of a refurbishment of a building that is not, simply because the latter has more options when it comes to materials and procedures that may be used. This is the reason for which the Ministry of Culture delivers financial support to owners of Listed Monuments to compensate for the excess costs. An owner of a building within an ETZ that is not a Listed Monument often faces similar limitations, yet is not eligible for any form of support.

Overcoming the third obstacle in heritage protection is indeed the most difficult. Several municipalities (including, recently, the municipality of Mšeno) have decided to overcome the third obstacle by creating their own programs that aim to compensate the owners of buildings within the limits of their ETZ substituting the role of the Ministry of Culture. To overcome the first two obstacles is comparatively simple. The legislation of monument protection should above all define the process of procurement of the regeneration plans. Procurement of the regeneration plans⁸ that would enforce the role of the public, in a manner similar to the procurement of the land use plans,ⁱ would provide grounds for more open deliberation on the differences between the views of the experts and the general public to the benefit of both. Open discussion between the general public on one side and the experts on the other on what and how should be preserved from the recent built environment for future generations could, moreover, help to understand the nature of the local 'built heritage'. Subsequently, plans procured in this way could provide further legitimacy to the municipalities' compensation to the affected homeowners, if the need be. This is because any plan of this kind needs to define the borderlines between self-interest of the owners on one side and the public interest of the municipality and mankind on the other.

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⁸ During land use plan procurement, the public has a right to comment or appeal against any regulations indeed. The respective state authority may veto any of these provided they violate legal regulations. The planner, on the contrary, does not have to accept these appeals provided he could justify his decision in such a manner that would stand an appeal in a court.

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