

MEASURE OF CULTURAL LANDMARK CONSERVATION- BINDING OPINIONS AND WRITTEN STATEMENT OF THE NATIONAL HERITAGE INSTITUTE

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Introduction

The Czech Republic is a state that tries to preserve its cultural and historical identity by legally regulating the protection of its cultural heritage primarily through the legal regulation of the care of cultural landmarks. The basis for the protection of landmarks is its definition in the Constitutional order of the Czech Republic and in the Act on State Landmark Conservation. The aim is to ensure the effective and transparent protection of the heritage fund, especially through the institute of renewal of cultural landmarks. The renewal of cultural landmarks is enshrined in Section 14 of Act No. 20/1987 Coll., on State Landmark Conservation, as amended, hereinafter referred to as the "Act on State Landmark Conservation". The concept of renewal is understood as a legislative abbreviation for activities such as maintenance, repair, reconstruction of a cultural landmarks, or it may be its restoration, other modification or intervention in its environment, while with the exception of restoration none of these activities is legally defined.¹⁰² The state, through the state landmark conservation bodies and the National Heritage Institute, assesses plans to carry out these activities from the perspective of the principles of conservation and uses a legal instrument - a binding opinion to regulate these activities. In order for this binding opinion to be issued by the relevant state conservation authorities, an opinion of the National Heritage Institute must be requested.

Binding opinion of the landmark conservation body

Binding opinions are issued by the state landmark conservation bodies, they are basis for the decision of the competent administrative authority or are themselves an administrative decision.¹⁰³ The state landmark conservation bodies, i.e. the municipal office of a municipality with extended powers, and regional authorities, will express their opinion on whether the submitted intention of the owner of the cultural

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¹⁰² ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: „Zákon o státní památkové péči. Praktický komentář“ Praha, Wolters Kluwer ČR, 2019, p. 129.

¹⁰³ VARHANÍK, J.-MALÝ, S.: „Zákon o státní památkové péči: komentář. 1. edition“ Praha: Wolters Kluwer ČR, 2011, p. 79-83. More also thesis MRÁZKOVĚ, Magdalény „Vyjádření odborné organizace státní památkové péče v procesu vydávání závazných stanovisek při obnově kulturní památky“



landmark to carry out its restoration is permissible and set the conditions for its implementation. When issuing them, they are guided by the opinion of the professional organisation involved in the state landmark conservation - the National Heritage Institute as the guarantor of the expertise of the state administration in the field of state landmark conservation. At the same time, it is possible and permissible for them to deviate from the content of the National Heritage Institute's statement when issuing binding opinions, provided that the legal conditions are met. The opinion of the National Heritage Institute is a prerequisite for issuing a binding opinion under both Section 149 and Section 67 of the Code of Administrative Procedure.¹⁰⁴

The new text of the Act on Spatial Planning and Building Code (Building Act), hereinafter referred to as the "Building Act", in the sense of integration of permitting processes and efforts to speed up administrative proceedings, as well as the adoption of Act No. 283/2021 Coll., the Building Act, which takes full effect from 1 July 2024, play a crucial role.¹⁰⁵

The basic provision in relation to the legal regulation of the issuance of binding opinions by the landmark conservation bodies is the aforementioned Section 14 of the Act on State Landmark Conservation. If the owner of a cultural landmark intends to carry out the renewal of a cultural landmark pursuant to Section 14(1) of the Act on State Landmark Conservation or the owner of a property that is not a cultural landmark but is located in a conservation area intends to carry out works pursuant to Section 14(2) of the Act on State Landmark Conservation, it is obliged to request a binding opinion from the municipal office of a municipality with extended powers or the regional authority if it is a national cultural landmark. It is essential that the binding opinions are of a preventive nature, because the assessment of the suitability of the restoration plan, both in terms of the proposed scope and the suitability of the proposed works, takes place in advance.¹⁰⁶

¹⁰⁴ § 32 odst. 2 písm. f) Act on State Landmark Conservation

¹⁰⁵ According to A. n. 183/2006 Sb., Act on Spatial Planning and Building Code (Building Act), especially A. n. 403/2020 Sb., so called Linear Act. The state landmark conservation bodies are authorised to issue binding opinions pursuant to Section 149 of the Code of Administrative Procedure on the plan to renew a cultural landmark or a national cultural landmark or a property located in a landmark reservation or a landmark zone that is not itself a cultural landmark or a national cultural landmark. In addition, plans for the renewal of properties located within the protection zones of an immovable cultural landmark, immovable national cultural landmark, landmark area and landmark zone will also be assessed, in order to protect the environment and, in particular, the property concerned.

¹⁰⁶ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid.*, p. 144. They state that "practice has tended towards a rather loose interpretation of precautionary effect, whereby the fulfilment of the condition 'in advance' is understood broadly, including cases where the application is made in the course of the execution of the works or where the works are already carried out in the course of the relevant procedure".

Binding opinion issued pursuant to Section 149 of the Code of Administrative Procedure

The binding opinion makes the decision in the administrative procedure conditional. Pursuant to Section 149(1) of Act No. 500/2004 Coll., Code of Administrative Procedure, as amended, hereinafter referred to as the "Administrative Procedure Code", it is an act performed by an administrative authority on the basis of the law in administrative proceedings (main proceedings), it is not an independent decision in administrative proceedings and its content is binding for the operative part of the decision of the administrative body.¹⁰⁷ In this case, it is necessary to relate the above-mentioned Section 14(1) and (2) of the Act on State Landmark Conservation to the provisions of Section 44a(3) of the Act on State Landmark Conservation, which regulates the mutual relationship between the Act on State Landmark Conservation and the Building Act when issuing binding opinions.¹⁰⁸ A binding opinion is issued if the building authority is competent to decide on the matter under the Building Act, cumulatively - it must be a building or other intervention regulated by the Building Act.¹⁰⁹ It is not only about the administrative procedure itself, but also about other procedures where the decision-making power of the building authority is established, such as the notification regime for the implementation of buildings or the issuance of planning consent. The procedure where a public law contract is concluded is also specific. The builder states in the draft contract that he undertakes to comply with the conditions laid down in the binding opinions of the authorities concerned pursuant to Section 78a(2) or 116(3) of the Building Act.

Pursuant to Section 149(2) of the Code of Administrative Procedure, which defines the content of a binding opinion, a binding opinion consists of a binding part and a statement of reasons.¹¹⁰ Binding opinions issued in this way cannot be challenged on appeal. They may be reviewed on appeal only in the context of an appeal

¹⁰⁷ Compare SLÁDEČEK, V. „Obecné správní právo. 4., aktualizované vydání“ Praha, Wolters Kluwer ČR, 2019, p. 186. Compare FRUMAROVÁ, K., GRYGAR, T., POUPEROVÁ, O., ŠKUREK, M.: „Správní právo procesní. 1. vydání“ Praha: C. H. BECK, 2021, p. 460. It points out that there is no distinction in the Code of Administrative Procedure with the opinion issued under Article 67 of the Code of Administrative Procedure. In order to make the distinction, it is necessary to apply the rules laid down in the special laws governing the various parts of the public administration, taking into account the essential criterion of the finality of the decision, i. e. whether the binding opinion issued is the basis for a decision of another administrative body or whether it is a binding opinion in the form of a final decision. Read more PRŮCHA, P. „Správní řád s poznámkami a judikaturou. 4. aktualizované a doplněné vydání“ Praha, Leges, 2019, p. 435. Compare also Judgment of the Supreme Administrative Court of 10. 5. 2017, č. j. As 163/2016-27. Next ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid.*, p. 529.

¹⁰⁸ Compare § 105 a § 106 Act on Spatial Planning and Building Code (Building Act), and, of course, to apply the provisions of Section 136 of the Code of Administrative Procedure, which regulates the authorities concerned.

¹⁰⁹ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid.*, p. 526-527.

¹¹⁰ The substantive requirements were first derived from case law, as there was no relevant statutory regulation. Compare also Judgment of the Supreme Administrative Court of 22. 10. 2009, č. j. 9 As 21/2009-150, Read more PRŮCHA: *ibid.* p. 436, and § 149 odst. 2 Code of Administrative Procedure. In the binding part, the authority concerned "shall state the solution to the question which is the subject of the binding opinion, the provision of the law which authorises its issue and other provisions of the legislation on which the content of the binding part is based. It shall state in the statement of reasons the grounds on which the content of the binding part of the binding opinion is based, the grounds on which it is based and the considerations which have guided its assessment and interpretation of the legislation on which the content of the binding part is based."

against a final, i.e. conditional, decision.¹¹¹ Similarly, judicial review of the content of binding opinions in accordance with Article 36(2) of the Charter of Fundamental Rights and Freedoms is possible only by way of judicial review of the final administrative decision pursuant to Article 75(2) of the Code of Civil Procedure.¹¹² However, binding opinions issued in this way can be reviewed in a review procedure and, on the basis of the illegality found, the superior administrative authority of the authority that issued the binding opinion may cancel or amend the opinion. Both the party to the proceedings and the administrative authority are entitled to lodge a complaint if, in the course of its official activities, it finds that another administrative body has issued an unlawful binding opinion.¹¹³

Fundamental changes to the legislation were brought about by the aforementioned amendment to the Liner Act.¹¹⁴ This amendment also amended the Code of Administrative Procedure and the Building Act. In particular, it introduced into the Code of Administrative Procedure a time limit for issuing a binding opinion. Under the provisions of Section 149(4) of the Code of Administrative Procedure, the administrative body competent to issue a binding opinion is obliged to issue it 'without undue delay, no later than 30 days from the date on which it was requested to issue a binding opinion'. If an on-site inspection must be ordered or if the case is particularly complex, up to 30 days may be added to this time limit.¹¹⁵ If the application for a binding opinion does not have the prescribed formalities or suffers from other defects, the administrative authority shall invite the applicant to eliminate the defects and shall provide him with a reasonable period of time for doing so and, in particular, shall fulfil its duty to instruct the applicant on the consequences of failure to eliminate the defects in the application. The time limit for issuing a binding opinion shall not run while the application is being remedied. The new period shall start to run from the date on which the defects in the application are remedied. If the applicant nevertheless fails to remedy the defects in the application which prevent the issuing of a binding opinion, the administrative authority shall inform the applicant that a binding opinion cannot be issued.

In this context, the amendment to the Building Act concerns the provisions of Section 4(9). If the binding opinion of the concerned authority is not issued within the time limit for its issuance (even if the time limit

¹¹¹ Judgement of the Extended Chamber of the Supreme Administrative Court of 23. 8. 2011, čj. 2 As 75/2009-113, in which the Extended Chamber of the Supreme Administrative Court expressed the opinion that binding opinions issued pursuant to Section 149 of the Code of Administrative Procedure are not decisions within the meaning of within the meaning of Section 67 of the Administrative Procedure Code or Section 65 of the Code of Civil Procedure, as they do not in themselves create, modify or abrogate or bind rights or obligations. More on the complicated evolution of case law PRŮCHA: 2019, p. 437.

¹¹² More PRŮCHA *ibid.*, p. 438

¹¹³ Cf. § 94 et seq. - review proceedings and § 156(2) of the Code of Administrative Procedure, which is not applicable in this case. Section 149(8) of the Code of Administrative Procedure, which was amended by the amendment to the Liner Act, applies.

¹¹⁴ Act No. 403/2020 Coll., amending Act No. 416/2009 Coll., on accelerating the construction of transport, water and energy infrastructure and electronic communications infrastructure, as amended (hereinafter referred to as the "Liner Act").

¹¹⁵ POJESIL, Lukáš „a kol. *Správní řád. 2. vydání.*“ Praha, Nakladatelství C. H. Beck, 2020, p. 735. More Explanatory Memorandum to Act No. 403/2020 Coll. amending the Linear Act, p. 55.

has been extended and the concerned authority has issued a resolution to that effect, which it has noted in the file and informed the applicant), it is deemed to be consensual and without conditions. The amendment therefore introduced the institution of a fictitious consent opinion.¹¹⁶ The main reason was to eliminate unjustified delays in the proceedings. At the same time, however, pursuant to Section 4(10) of the Building Act, if the prerequisites for issuing a fictitious consent opinion without conditions were not met, the superior administrative authority may cancel the fictitious opinion by issuing a new binding opinion and thereby cancel the previous fictitious opinion. The new opinion may be issued within six months of the legal validity of the decision which was conditional on the binding opinion.¹¹⁷

Binding opinion issued pursuant to Section 67 of the Code of Administrative Procedure

According to Section 44a(3) of the Act on State Landmark Conservation a binding opinion is a decision in an administrative proceeding if it is issued by a state landmark conservation body in a matter that the building authority is not competent to decide on under the Building Act. In the sense of the following exhaustive list: the implementation of building modifications pursuant to Section 79(2) of the Building Act, where no decision on the location of the building or planning consent is required, similarly changes in the use of the territory pursuant to Section 80(3) of the Building Act and buildings, landscaping, equipment and maintenance works not requiring a building permit or notification pursuant to Section 103 of the Building Act. a.¹¹⁸

In the light of the amendment to the Linear Act described above concerning the time limits for issuing a binding opinion, it should be noted that according to the provisions of Section 71(1) of the Code of Administrative Procedure, the administrative body is obliged to issue a decision without undue delay. If it is not possible to issue a decision in this way, the administrative authority is obliged to issue a decision within 30 days of the initiation of the proceedings, plus up to 30 days if it is necessary to order an oral hearing or a local inquiry, to summon, to conduct a hearing or to serve a public notice on persons who are demonstrably unable to be served or if the case is particularly complex. In addition, the time required for the execution of a request for an inquiry, the preparation of an expert report or the service of a document abroad shall be added.¹¹⁹ Failure to comply with the time limit for issuing a binding opinion constitutes maladministration and measures against inaction may be applied. Likewise, unlike binding opinions issued under Section 149

¹¹⁶ Section 4(9) of the Building Act, as amended by Act No. 403/2020 Coll., the Linear Act. More Explanatory memorandum to Act No 403/2020 Coll. amending the Linear Act, p. 6.

¹¹⁷ Section 4(10) of the Building Act.

¹¹⁸ More ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p 36. This also includes cases of project documentation in the form of a conceptual plan or preliminary study. The state landmark body issues a binding opinion in the form of a decision.

¹¹⁹ Section 71 of the Code of Administrative Procedure.

of the Code of Administrative Procedure, they may be challenged on appeal and their judicial protection is ensured.¹²⁰

Statement of the National Heritage Institute

Statements as part of binding opinions (forms of action of administrative bodies) are of significant importance in the implementation of the renewal of cultural landmarks.¹²¹ Binding opinions, which are issued by the state landmark conservation bodies, are an basis for the decision of the competent administrative body or are themselves an administrative decision.¹²² However, the state landmark conservation bodies are guided in their issuance by the opinion of the expert organization of state landmark protection - the National Heritage Institute as the guarantor of the expertise of the state administration in the field of protection of cultural landmarks. At the same time, it is possible and permissible for them to deviate from the content of the National Heritage Institute's statement when issuing binding opinions, provided that the legal conditions are met. The opinion of the National Heritage Institute is a necessary condition for the issuance of a binding opinion under both Section 149 and Section 67 of the Code of Administrative Procedure.¹²³

The competent administrative body shall request a statement after it has received the request for a binding opinion. The National Heritage Institute shall evaluate the plan for the renewal of the cultural landmark and issue a statement within 20 days; in particularly complex cases, the time limit may be extended by up to a further 30 days; the extension of the time limit shall be decided by the administrative body, which must also extend the time limit for issuing a binding opinion. The maximum time limit for issuing a statement may be 50 days.¹²⁴ If the time limit expires in vain, the binding opinion may be issued without the opinion of the National Heritage Institute. The statement is evidence and the administrative body applies the principle of free evaluation of evidence.¹²⁵

The basic provision in relation to the legal regulation of the issuance of statements by the National Heritage Institute is the aforementioned Section 14(1) and (2) of the Act on State Landmark Conservation. The state landmark protection body, whether it is a municipal office of a municipality with extended powers, and regional authority¹²⁶ before issuing a binding opinion, it shall request a written statement from the National

¹²⁰ Compare PRŮCHA *ibid*, p. 435

¹²¹ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 128.

¹²² VARHANÍK-MALÝ *ibid*, p. 79-83.

¹²³ § Section 32(2)(f) of the Act on State Landmark Conservation.

¹²⁴ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 157.

¹²⁵ If the administrative authority does not follow the opinion of the National Heritage Institute, it is obliged to justify this in the justification of the binding opinion. More ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 158.

¹²⁶ If it is a cultural landmark or national cultural landmark or a property located in a landmark reservation or landmark zone that is not itself a cultural landmark or national cultural landmark.

Heritage Institute, which is a professional organisation of the state landmark protection. The National Heritage Institute shall submit its opinion to the State landmark protection body within twenty days of the date on which it received the request for its issuance. This time limit is not per se fixed. It is part of the thirty-day period within which a binding opinion must be issued by the State landmark body. In particularly difficult cases, the time limit may be extended. The competent administrative body to issue the binding opinion may do so, but is not obliged to do so, of course, with the proviso that the time limit for issuing the binding opinion is also extended. The maximum time limit is therefore 50 days.

If the extended time limit is not met and the statement is not made and the state landmark body is not delivered in the sense of handing over a copy of the written version, the authority may issue a binding opinion even without the missing statement of the National Heritage Institute. In any event, from the point of view of the professional protection of cultural heritage, about the desired state. In addition, in order to be able to issue an opinion, it is necessary to verify that all the other procedural requirements are met, namely the establishment of the facts of the case and the existence of a proper statement of reasons o.¹²⁷

However, a situation may arise that the statement of the National Heritage Institute is prepared and delivered to the state heritage protection body after the expiry of the extended deadline. In this case, the administrative body will also take into account such a late statement, but only if it has not yet issued its binding opinion.¹²⁸ It does so primarily to ensure the expertise of the assessment of the case.

Similarly, the institution of fiction may be pointed out, which would seem to be possible in this context. The question remains, however, whether it is appropriate. It is assumed that the content of the statement is a highly professional assessment of the applicant's intention from the point of view of conservation. Nor does the provision of section 14(6) Act on State Landmark Conservation correspond to the possibility of its normal absence, nor is the administrative discretion of the National Heritage Institute assumed here.

Statement of the National Heritage Institute as evidence

The opinion of a professional organization of the state conservation has the nature of evidence.¹²⁹ The administrative authority issuing the binding opinion is not bound by the conclusions of the expert body of the state conservation authority. It evaluates it as evidence.¹³⁰ It follows that it may depart from the

¹²⁷ Similarly, we can look at the situation where an opinion is issued in a timely manner but is disadvantageous to the applicant. It is clear from the content of the statement that the applicant's intention is found to be inadmissible. In such a case, it is necessary to deal with these conclusions both in the opinion and then in the decision of the administrative body.

¹²⁸ I.e. he did not provide a written copy of the binding opinion. Section 71(2)(a) of the Code of Administrative Procedure. Compare ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 157. It is a similarity.

¹²⁹ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 158. Furthermore, Opinion of the Ministry of Culture, Department of Heritage Protection of 10 October 1997, No 10904/97, available at: www.mkcr.cz. (cited:30/09/2023)

¹³⁰ Compare § Section 50(4) of the Administrative Procedure Code, in the sense of the principle of free evaluation of evidence, as well as the judgment of the Municipal Court in Prague of 31. 5. 2018, č. j. 5 A 187/2014-82. Furthermore, in the sense of the

conclusions contained therein. However, in that case, it is under an obligation to duly justify the divergent assessment in the statement of reasons for the binding opinion issued, in terms of the grounds, conclusions and considerations which guided its assessment.¹³¹

The contents of the statement of the professional organisation of the state conservation must always be fulfilled. In particular, it must always be clear whether the applicant's project under examination is considered admissible or inadmissible, and the conclusion of the examination must always be clearly and comprehensively justified.¹³² In addition, the statement must include a description of the proposed works (the source is a copy of the application and project documentation provided by the state conservation authority), a description of the values of the protected object and an assessment of the impact of the proposed works on those protected values.¹³³ In addition to the above, the expert organization must draw on relevant literature, other sources such as archival materials, its own research, photo documentation, etc. It must respect national and supranational methodological guidelines.¹³⁴ The justification must be sound and detailed, not only if it proposes conditions of implementation for the project under consideration.¹³⁵ In the binding opinion, this reasoning may then be used verbatim, or the administrative authority may use at least part of the reasoning of the statement, in this case with appropriate justification, or in the case of a different opinion and failure to accept the conclusions with appropriate justification. Here, too, as already mentioned in the text above, care must be taken to ensure that differences in the concept of monument protection do not arise and that the double-track nature of protection represented by the views of the National Heritage Institute and the state landmark conservation body does not result.¹³⁶ The National Heritage Institute therefore introduces, through its statements, the conditions of the so-called established decision-making practice, subsequently implemented by the state landmark conservation bodies. In this context, it is thus necessary to emphasise the fulfilment of one of the basic principles of the activities of the administrative bodies, namely the principle of legitimate expectation and the derived principle of non-surprise. However,

Judgment of the Supreme Administrative Court of 2 August 2012, No 5 Azs 2/2012-49 on the assessment of the evidence individually and in their mutual context.

¹³¹ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 159. 'This is a procedure of the conservation authority that is in accordance with the law, but it should be rather unique so as not to create specific differences between the performance of conservation by the National Heritage Institute and the state landmark bodies.

¹³² ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 158. Compare Judgment of the Regional Court in Ústí nad Labem of 20 June 2006, No 59 Ca 59/2005-32, available at www.nssoud.cz.

¹³³ VARHANÍK-MALÝ *ibid*, p. 91, compare Judgment of the Municipal Court in Prague of 24 October 2019, No. 5 A 57/2016-38, available at: www.mkcr.cz. (cited:30/09/2023)

¹³⁴ VARHANÍK-MALÝ *ibid*, p. 91. Cf. Judgment of the Regional Court in České Budějovice of 26 October 2016, No. 50 A 2/2016-38, available at: www.mkcr.cz. (cited:30/09/2023)

¹³⁵ Compare Judgment of the Supreme Administrative Court of 21 January 2010, No. As 36/2009-162, available at: www.mkcr.cz. (cited:30/09/2023)

¹³⁶ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p. 159. Cf. Judgment of the High Court in Prague of 5 A 67/96-29, and Judgment of the High Court in Prague of 25 February 1997 No. 6 A 139/1994, available at: www.mkcr.cz. (cited:30/09/2023)

it should also be emphasised that similar treatment to that in previous comparable cases can be invoked only if that previous action by the administrative body was in accordance with the law. It is therefore not possible to claim that the administrative body has complied with a previous unlawful practice, even if it has not been challenged or brought into conformity with the law. According to the second sentence of Article 2(4) Code of Administrative Procedure, the administrative authority is to ensure that no unjustified differences arise in its decision-making. At the same time, however, it is possible to modify the principle of legitimate expectations by applying the principle of the protection of the public interest.¹³⁷

At the same time, it should be taken into account that the National Heritage Institute has no decision-making power. This is given by law to the state landmark conservation body, which decides in administrative proceedings and may issue an administrative act.¹³⁸ According to its statute, the National Heritage Institute is a professional organisation of the state heritage protection.¹³⁹ As such, it has no legal means of defending itself in cases where the state conservation authority does not respect the issued statement as to the admissibility of the assessed plans. In the case of a binding opinion, which is a decision in itself or the basis for an administrative decision of another administrative body, such as a building authority, the National Heritage Office is not a party to the proceedings and therefore cannot appeal. The only option would be to initiate a review procedure.¹⁴⁰

Definition of the institute of the statement of the National Heritage Institute in the proposed new legal regulation by the Act on the Protection of the Heritage Fund and on the amendment of Act No. 20/1987 Coll., on State Heritage Care

In 2019, the Ministry of Culture prepared a draft law on the protection of the monument fund and on the amendment of Act No. 20/1987 Coll., on state landmark conservation, and the institute of expression was retained in it, in accordance with the existing legislation.¹⁴¹

Title IV. Marked as "Assessment of work on a cultural monument, in a conservation area and in a conservation area", the statement was enshrined in § 44. In terms of the procedure of the conservation body, the latter was obliged, upon receipt of an application for the assessment of work on a cultural landmark, an

¹³⁷ More Judgment of the Supreme Administrative Court of 12 May 2016, no. 5 As 155/2015-35, available at www.nssond.cz. See also Opinion of the Ministry of Culture, Monument Inspectorate of 24 March 2011, no. 17082/2011 Pl, available at: www.mkcr.cz. (cited:30/09/2023)

¹³⁸ ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p 159. See also the judgment of the High Court in Prague of 25 February 1997, Case No. 6 A 139/94-17.

¹³⁹ Cf. Statute of the National Heritage Institute of 25 June 2020, ref. MK S 5513/2020 OPP, available at available at: www.mkcr.cz. (cited:30/09/2023) Cf. also the Implementing Decree No. 66/1986 Coll., to the Act on State Landmark Conservation.

¹⁴⁰ § 94 of the Code of Administrative Procedure and more ZÍDEK, M.-TUPÝ, M.-KLUSOŇ, J.: *ibid*, p 158.

¹⁴¹ available at: www.mkcr.cz. (cited:30/09/2023)

application for the assessment of the renewal of a cultural landmark or an application for the assessment of work in a conservation area and conservation zone, to inform the conservation authority of the intended work. In order to strengthen the legal certainty of the applicant, it was proposed that the state landmark conservation body should immediately send a written communication to the conservation authority stating that it would not comment 'unless there are facts justifying a different conclusion in factually identical or similar cases compared to those dealt with previously'.¹⁴² This would directly introduce the fiction of a positive opinion of the National Heritage Institute, but supported by a written communication of the relevant opinion. It is also possible that no opinion at all could be given, in which case these would be so-called 'minor cases'. The appellant has thus solved the problem of the current legislation in that, although it is a recurring routine, it is quite burdensome for the landmark conservation body in that a written opinion must always be drawn up. The appellant has thus fully invoked the principle of legitimate expectation and the principle of non-surprise in the procedure and decision-making of the administrative body, as discussed above in the text, as well as the potential problems of the institution of fiction. However, it is a prerequisite for the implementation of this procedure that the landmark conservation body has complete documentation for the assessment, either in the form of a detailed description by the landmark conservation body or in the form of a copy of the application.¹⁴³ In other cases, it was suggested that the conservation authority could deliver its statement within twenty days of receiving the information from the conservation authority. The latter cannot issue its assessment of the application until it has received the relevant statement or the statutory period of 20 days has expired. If the representation is received by the conservation body after the time limit has expired, it shall not be taken into account.¹⁴⁴

Conclusion

The lack of modern legal regulation of the protection of cultural heritage and especially cultural landmarks is a problem of the Czech legal system. The Constitution of the Czech Republic already refers in its Preamble to the need to protect cultural heritage. Article 34(2) of the Charter of Fundamental Rights and Freedoms establishes a certain degree of protection of cultural heritage and ensures access to it, while Article 35(3) directly sets limits to the protection of cultural heritage. The State protects cultural monuments and oversees their protection, which is in the public interest. The Czech Republic is bound by a number of international

¹⁴² Draft Act on the Protection of the Monument Fund and on Amendments to No. 20/1987 Coll., on Act on State Landmark Conservation, § 44(2), first sentence, p. 22. *ibidem*

¹⁴³ It is for the purpose of drafting the statement that the National Heritage Institut must have the right to inspect the file, make extracts or make a copy of the file or a part of it, more Explanatory Report to the Draft Act on the Protection of the Monument Fund and on the Amendment to Act No. 20/1987 Coll., on State Landmark Conservation., p. 51. available at: www.mkcr.cz. (cited:30/09/2023)

¹⁴⁴ Draft Act on the Protection of the Monument Fund and on the Amendment of Act No. 20/1987 Coll., on State Landmark Conservation., p. 51. available at: www.mkcr.cz. (cited:30/09/2023)

treaties, such as the Convention Concerning the Protection of the World Cultural and Natural Heritage, which established the World Heritage List and the World Heritage Fund.¹ The basic law is Act No. 20/1987 Coll., on State Landmark Conservation. Conservation, which is the only legal regulation of care for cultural landmark. Efforts can be traced to modernise this law and, above all, to adopt a new, modern law that would comprehensively regulate monument care and respond to changes in the concept of protection of cultural monuments. The most recent proposal was the government's draft law on the Heritage Fund, which was rejected by the Chamber of Deputies in its third reading in 2017. The Ministry of Culture prepared a draft law on the protection of the monument fund and on the amendment of Act No. 20/1987 Coll., on State Landmark Conservation, which was submitted for comments in 2019 and unfortunately no further action was taken. Fundamental changes to the legislation were brought about by the amendment of the Building Act and the Linear Act, with my focus on the change of the legal regulation of the institute of binding opinions and statements, which is essential for the implementation of the restoration of cultural monuments and their preservation under the current, rather outdated legislation.

