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The protection and preservation of monuments and sites in the Federal Republic of Germany

Legal, financial and organizational aspects

1. Legal aspects

The Federal Republic of Germany being a federal state comprised of 11 states (Länder) competences are divided between federal and state parliaments and governments.

1.1 Federal legislation

The Federal Building Act (Bundesbaugesetz) covers urban and rural planning and gives local communal authorities the basis for preparing building plans. It contains regulations for procedures as well as different criteria to be considered.

Among the relevant public interests to be taken into account in the planning process are:

- the social and cultural needs of the population,
- the areas, buildings, streets and squares of historical, artistic or architectural importance worth preserving and
- the shaping of the town- and landscape.

Local planning authorities have to inform different specific institutions safeguarding the various public interests of the planning process and give them an opportunity to state their opinion on the proposed plan. Thus consultative state authorities like the Offices for the Preservation and Conservation of Monuments have the possibility of influencing planning in order to save singular buildings of historical importance or to prevent the destruction of historic districts.

However participation in the planning process does not necessarily mean that monuments and sites will be protected in the end by the plan, as the local planning authority may decide against a specific public interest if it comes to the conclusion that other public or private interests are more important.

An enacted building plan is binding for all landowners within the area covered by the plan. That means for example that the landowner has a right to build on his estate in the way permitted by the plan. Depending on the contents of the plan it can help to preserve a building of historical importance - that is the case when the plan does not extend the existing use of the plot of land - or it can lead to the probable disappearance of such a monument - that would be the case if the plan allows a more extensive use of the piece of land than currently existing.

For areas for which a local building plan does not exist the Federal Building Act provides that new buildings or modifications of existing properties are permissible only if the use, architecture and area to be built up are consistent with the immediate neighbourhood, taking into account the characteristic settlement structure. New buildings and alterations in built-up areas are therefore tied to the existing development, which means that buildings of historical importance and other property worth preserving receive protection.

The Federal Building Act contains moreover a number of legal instruments for urban conservation measures and a right of first-option purchase to ensure that urban conservation policies will achieve their aims.

1.2 State legislation

As the laws of all the 11 states concerning the subject are more or less alike the regulations existing in the State of Bavaria may stand as an example:

- 1.2.1 The Bavarian Building Act (Bayerische Bauordnung) contains a number of detailed technical provisions on how to build a house, it determines the procedure for getting permission for the erection, alteration or demolition of a specific building, and it specifies in what cases a permit is necessary. Whereas the federal law regulates the planning on a larger scale i.e. for whole areas, this regional state building act covers the planning and the execution of the construction of one building in detail.

Regarding historical buildings, the Bavarian building act contains some general architectural provisions covering the shape and style of a building which has to be fitted into the existing surroundings in a way not defacing the environment. This allows the prevention of townscape disfigurement, a very important aspect for the appearance of our towns, but does not particularly safeguard the inner historic substance of buildings, an equally or even more important aspect for the conservator of monuments. Protected historical buildings may, however, at least be exempted from the technical regulations contained in the act. This helps to conserve old buildings which, although they may have been standing for hundreds of years, usually do not keep up with modern technical standards, especially in terms of statics.

The act gives local communal authorities the additional possibility of setting up specific local regulations in bye-laws tailored to local circumstances. In historic towns, for example, this allows the passage of townscape ordinances with regulations which have to be observed in addition to the general building requirements laid down in the act itself.

- 1.2.2 The Bavarian Law for the Protection and Preservation of Monuments (Bayerisches Denkmalschutzgesetz) is the proper law referring only to architectural and archaeological monuments and their surroundings.

The law understands monuments as man-made objects or parts thereof from a past epoch which because of their historical, artistic, scientific, ethnic or their significance for urban planning are worthy of preservation in the public interest.

The decision in which particular case this definition is to be applied lies with the Bavarian Office for the Preservation of Monuments (Monument Office) which has to record each monument in a list. The listing of all the objects worthy of protection, in itself already an immense scientific task, has to be carried out in accordance with the local communities where the objects are situated. Differing from the protective legislation in some other German states, the list of monuments in Bavaria does not have a constitutive character. This means that the rules of the protection law also apply to objects which are not yet definitively listed or even not yet listed at all,

as long as the Monument Office states their monumental quality. In other German states listing is a precondition for the application of the appropriate provisions for protection. Consequently in these states the owner of a monument may appeal the listing to a court which then reviews the monumental quality. Under the Bavarian system this is not possible. This however does not mean that the owner of a listed object in Bavaria is without legal protection. As soon as permission for alterations or for the demolition of his property is denied for reasons of the monumental quality, he may apply to the courts, which then review not only the negative decision in question but also the monumental quality.

Protective statutory provisions for historical buildings are the following:

- Owners of monuments are obliged to maintain and repair their property within reasonable economic limits depending on their individual financial capacity. This obligation can be enforced by the authorities even against the will of the owner. In case the owner himself is financially incapable or unwilling, urgently necessary repair measures may be carried out by the authorities themselves. If there is no other way to save a monument it may be expropriated against compensation.
- Any kind of action which damages or endangers a monument may be prohibited.
- The owners are obliged to use monuments adequately in a way which is suited to the original purpose of the building.
- All alterations etc. to buildings of historical importance are subject to approval by the authorities. Such alterations include repairs, restoration, removal from the original site or any change in the environment which would impair the property. Thus not only buildings classified as monuments are covered by the provisions but also buildings in the vicinity of a monument. In daily practice these provisions are the most important and the most effective for the protection of monuments.

Concerning archaeological monuments the Bavarian Law for the Protection and Preservation of Monuments contains the following regulations:

- All excavations for any purpose on property which contains or which is likely to contain archaeological monuments are subject to approval which may be refused by the authorities if necessary to protect the monument.
- Every discovery of an archaeological monument or object has to be reported immediately to the authorities. The site of the discovery has to be left unchanged and if necessary safeguarded until the authorities give permission to continue the work.
- Landowners can be obliged to tolerate all measures in connection with the scientific examination of an archaeological find on their property. Finders of movable archaeological objects can be obliged to render temporarily the pieces found to the Monument Office for scientific documentation. The state

however does not acquire ownership of the objects.

Any deliberate or involuntary contraventions of the provisions mentioned can be punished with fines up to half a million German marks, in case of illicit demolition of a monument even up to one million German marks. These high sums are however legal theory; in practice fines range up to 50.000 German marks.

2. Organizational aspects

Under the pertinent legislation, the responsibility for protection lies with a state Ministry. Thus, because art and culture in general, hence including monuments, buildings etc., are within the sphere of competence of the federal states, organization on the national level is decentralized, and on the level of the individual states centralized. From this it follows that organization depends on the size of the federal state and on the administrative structure which is based on the two-, in some cases three-tier structure.

In all cases there is a "two-track" system consisting of consultative specialized bodies on the one hand and decision-making authorities on the other.

In Bavaria, which is again taken as an example, this specialized consultative authority is the already mentioned Monument Office. Apart from the listing of monuments, research work, consultant work and distributing grants to the owners of monuments its main task is to represent the public interest of protecting and preserving monuments in the planning procedures both general and particular which are necessary under the building and protective legislation. The Monument Office is subordinated to the Bavarian Ministry for Science and Art, which is the highest protective authority. The highest building authority is the Bavarian Ministry of the Interior. The other building and protective authorities are, on the middle level, the seven county governments (Bezirksregierung); and, on the lowest level, the district administrative authorities (Kreisverwaltungsbehörde).

Whereas the Monument Office has only a consultative rôle, the stated authorities have the power of making binding decisions according to the building laws and the monument protective legislation. Consequently the Monument Office also has no supervisory powers over these building and protective authorities. Making decisions always is the result of a weighing of the pros and cons of the different public and private interests, a procedure which the Monument Office does not have to observe as it just has to state its opinion from the point of view of what is best for the preservation of a monument.

The district administrative authority, which is the first to decide on a plan or a request for a building permit or protective approval, may however, in important cases, not decide contrary to the opinion of the Monument Office. If the district administrative authority wants to decide against the consultative opinion the matter has to be brought to the county government which then makes the final decision. Thus the opinion of the Monument Office is given a certain weight.

Other bodies to be mentioned are the Monument Advisory Board (Landesdenkmalrat),

which consists of honorary representatives of various social and political groups and is an advisory body. State-owned castles, palaces and parks are administered and preserved by a special agency which in Bavaria is part of the Bavarian Ministry for Finance.

3. Financial aspects

The best legal possibilities alone are usually not sufficient to preserve monuments. Just as important is the financial background behind the laws which may require costly measures of conservation from the private owner of a monument.

As for financial help, several different possibilities exist for the owner of a monument. Repayable and non-repayable grants are given by the federal states and by the communal authorities for the restoration and repair of a monument. With these grants the authorities try to cover at least partially the costs which arise out of certain demands made because of the monumental quality of a building. Costs of normal upkeep of a building are not subsidized.

In 1982 all German states handed out about 140 million German marks as grants (by comparison the estimated number of monuments, excluding archaeological monuments, is 460.000 in the Federal Republic of Germany). In addition there is financial support from the Federal Government (8 million German marks in 1982) and from the local communal authorities.

Another financial advantage for the owner of a monument is that he can deduct all the costs of the restoration of a monument from his taxable income at rates more favorable than those given for buildings which are not monuments. Also with other taxes like inheritance tax, property tax and real estate tax, owners of monuments are privileged under certain conditions. For all tax benefits certifications of the consultative authority are necessary. Thus it is ensured that only faultless conservation measures profit from tax relief.

Besides these allowances which are linked to the monumental quality of a building there are numerous other financial schemes from which monuments may also profit.

Conclusion

Even more important than law and money is the consciousness of the people of cultural heritage, the realization that history is a factor forming our life today and that monuments are testimonies of our history worthy of preservation not only for us but also for future generations. This kind of consciousness is a prerequisite for our work which can only be successful if accepted by the citizen.

A lot of continuous information is needed to arouse and keep up this consciousness. That is why the consultative authorities set great value on public relations and press work.

Participation of the public in planning-procedures is another way of making people interested and conscious. The relevant laws offer and even prescribe this possibility.

The Federal Building Act provides for the participation of the local population in town development planning as a whole. Thus anyone may participate whether he is affected or not. Though the view of the population is not binding for the decision-making local authorities, it may very well lead to modifications of plans.

To enable the local population to have a say in planning-procedures the Act provides for two steps to be taken by the local authority:

- first, it must publicly explain the general objectives and purposes of the plans and give the general public an opportunity of presenting their views and of discussing the matter (hearing). Both must be done in an appropriate manner and in good time; the authority must draw attention to the plan's probable implications and to the main alternatives for the renewal or development of a particular area (to the extent that alternatives come into consideration).
- secondly, the authority must then lay out the draft development plans together with the explanatory report or justification for public inspection and must receive objections and suggestions. The plan must be available for public inspection for one month, and the place and duration must be advertised at least a week in advance.

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Precis

The protection and preservation of historical buildings, monuments and sites in the Federal Republic of Germany

Legal, organizational and financial aspects

The lecture describes the legal framework and the executive structures of protection and preservation of historical buildings, monuments and sites in the Federal Republic of Germany as well as the different kinds of direct and indirect financial support given to its owners.

Starting on the legal aspects federal building law is covered. It lays down the criteria for urban and rural planning. The building acts of the federal states contain technical provisions and determine the procedures for obtaining a building permit which is also necessary for the alteration and demolition of a historical building. The federal state laws for historic protection and preservation include provisions on the listing of protected objects, obligations for the owners of historical buildings and a number of regulations on archaeological monuments.

The administration responsible for the execution of building and protection laws lies with the federal states. It usually has a two- or three-tier structure ranging from state government to local level. Besides the decision-making authorities there are consultative expert bodies which have to be referred to in the planning procedures, both general and particular, necessary under the building and protective legislation.

Financial support for the owner of a historical building or monument includes repayable and non-repayable grants by state and communal authorities and advantages with income tax, inheritance tax, property tax and real estate tax.

The lecture concludes stressing the importance of public consciousness of the values of cultural heritage for historic preservation, pointing out public participation in planning procedures in the Federal Republic of Germany.

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Précis

La protection et la conservation des monuments et sites dans la République Fédérale d'Allemagne
Aspects légaux, administratifs et financiers

L'exposé décrit les lois sur la protection et conservation des monuments et sites dans la République Fédérale d'Allemagne, la structure de l'administration qui s'occupe de leur exécution et l'aide financière directe et indirecte accordée aux propriétaires des monuments.

L'exposé commence avec les aspects légaux et explique la loi fédérale sur la construction. Elle contient des règlements pour la planification urbaine et rurale. La législation des états (Länder) détermine des règles techniques détaillées nécessaires pour bâtir une maison et la procédure à suivre pour obtenir un permis de construction qui lui aussi est nécessaire, pour modifier ou démolir un bâtiment. Les lois des états sur la protection et conservation règlent le classement des objets dignes de protection, les obligations pour les propriétaires des bâtiments historiques et contient des réglementations statutaires sur les monuments archéologiques.

C'est l'administration des états qui est responsable de l'exécution des lois de construction et de protection. L'organisation de l'administration se base sur une structure à deux ou à trois niveaux. À côté des autorités qui prennent des décisions obligatoires pour les citoyens il y a des autorités dont la fonction principale est de donner des conseils est qui doivent être consultés dans les procédures de planification générale et individuelle.

L'aide financière qui reçoit un propriétaire d'un bâtiment historique comprend des allocations à fonds perdu accordé par les états et par les autorités communales. En plus, le propriétaire a des avantages financiers en ce qui concerne les impôts surtout les impôts sur le revenu.

L'exposé conclut en soulignant l'importance de la prise de conscience en ce qui concerne l'héritage culturel. Pour faire naître et renforcer une telle prise de conscience dans la population, il est nécessaire d'offrir une information continue, et d'assurer la participation des citoyens aux procédures de planification qui est prévue dans la loi fédérale sur la construction.