

ICOMOS Scientific Committee on Legal, Administrative and Financial Issues (CSI ICLAFI)

PRERICO-ICLAFI Joint Symposium and ICLAFI Annual Meeting from October 16th-20th, 2018, Jeju City / South Korea

Report from RD Assessor iuris Wolfgang Karl Göhner on “*Comparative Perspectives – Contemporary Issues on Law, Religion, Heritage and Conservation*”

I am glad that I am invited to share some thoughts about the aim of this joint symposium, “to seek a direction for ICOMOS through examining comparative perspectives concerning possible legal mechanisms to advance improved conservation practices for religious heritage”. Insofar, I will remember on my report to the annual ICLAFI meeting 2016 in Estonia, in which I fully described systematically the main legal aspects of the German Cultural Heritage Laws of the sixteen German States inside the Federal Republic of Germany.

The overall Symposium theme is more and more up-to-date and of a practically already threatening-looking importance also in Germany and my homeland, the Free State of Bavaria. The number of Roman Catholic and Protestant convents increased in recent years clearly is abandoned due to ageing of the religious orders or monastic communities and lack of Abbey juniors. These include a number of monasteries, the meaning of which is outstanding for the Bavarian country history, religion and art history, so for example Wessobrunn or Fürstenzell to name only the most prominent Bavarian examples.

"Continuity and change. Future prospects for the monasteries and churches in Bayern". This are outstanding current issues also in political terms. For a possible use in future, there are a number of different approaches, such as the ecclesiastical or secular meeting houses, medical use, residential, Museum, social projects, mixed uses, hotel; currently, the profane alternative uses predominate this in Bavaria. Therefore, the State and the Church upper authorities strive to maintain the landscape-formative monasteries as religious places, which are conveyed to the people of identity and home.

The latter offers the possibility that traditionally always publicly perceived places can remain open to the public as opposed to private use. This way offers long-term opportunity to keep the monasteries in the consciousness of a wider public both in terms of their architectural-historical and art-historical importance but also as spiritual places. New uses can of course also lead to significantly increased structural requirements, for example in the area of fire protection, sound insulation, escape routes or development - many successful examples demonstrate until today, that a sensitive adaptation to the changed needs is possible.

A particularly positive example represents currently the Roman Catholic monastery Beuerberg. After relocation of the few last sisters into the mother monastery at Lake Chiemsee since 2016 there are annual exhibitions to monastic life and shows in a particularly very vivid way an oblivion troubled life form. Despite an isolated location of the monastery, a surprising high number of visitors may be determined, which impressively confirm the outstanding importance of the existence of these communities alone, which once had usually had cleared out the relevant landscapes.

Problem cases are mostly vacant monasteries for which there are not existing currently any concepts.

Despite this developments, there is to state also the once again very current issue of the relationship of religious self-determination to the State Constitution requirement for a materially substantial preservation of architectural and archaeological heritage which outdated on us. In Europe, the Christian churches do have an outstanding and a proactive role and responsibility for that too, which they are not denying not beyond words but very often locally in the parishes, mostly in consequence of the dramatic reduction of the number of members. The number of members of the Churches in Germany was obliged at least by “social law” in some rural parts far longer than the end of World War II, but nowadays is developing up to the situation, one can find regularly with a normal “associations” which have voluntary members! Otherwise, if you calculate the clerical situation in such a way, than everybody has to admit that this clerical “associations” are still much bigger than the biggest other associations, clubs (including the biggest German Football Club) etc.

The protection and care of our Cultural Heritage is a task on behalf of society that transcends boundaries of states and nations. In Europe at least, we share a common past and a common heritage. However, German Conservation and Protection laws and the organisation of Conservation and its administrations differ from these in other European countries and indeed in most countries in the world quite intensively. Due to our quite special “German history” there was created a quite special federalism on the territory of the western part of the former “Deutsches Reich” after World War II; in a legal understanding there are nowadays existing seventeen States on this territory: the sixteen “Länder”, which have given only some competencies and powers to the seventeenth State, the Federal Republic of Germany. In conformity with the jurisdictional and legislative requirements, the sixteen German States as well as the Federal Republic of Germany are responsible for formulating, developing and applying, as far as possible, a policy whose principal aim is to co-ordinate and to make use of all the scientific, the technical, the cultural and other resources available to secure the effective protection, conservation and presentation of the cultural heritage. Otherwise, legally there is a main and rather complete responsibility of the “Länder”, esp. for Culture and Cultural Heritage. The Constitutions of most of the sixteen German “Länder” emphasise the protection and active care of historic buildings and sites as state objectives. Currently, sixteen German conservation laws (DSchG)¹ are existing, which have been emerged, recast or updated in four waves in the periods from 1971 to 1978, 1991-1993, 2001-2010 and once again from 2011 until today².

What role the Monuments shall play in the future? The future of heritage protection and the preservation of monuments also depend on the answer to this question. According to current knowledge, the future development of most of the German States including the Free State of Bavaria will be characterized by the fact that the overall population will decrease, the number of older persons who are no longer included in the labour market will increase in the total population and stable or increasing population will be concentrated on conurbations. The proportion of residents with a different ethnic, mental and religious background will increase, traditions will be torn down, religious, mental and cultural milieus will increasingly erode, replaced or superimposed. It is becoming apparent that, for political (deregulation), personnel

¹ <http://media.w-goehner.de/1.268%20-%20Denkmalschutzgesetz%20-%20Deutschland%20-%20Normtexte%20-%20aktuell%20-%20Stand%2018.01.2019.pdf>

² Hesse (2011 and 2016), Lower Saxony (2011), Hamburg (2013), North Rhine-Westphalia (2013), Baden-Württemberg (2014), Saxony (2014), Schleswig-Holstein (2014), Saarland (2015), Saxony (2016), Bavaria (2017), Bremen (2018)

(job cuts) or financial (taxes, debts) reasons, the German States and municipalities no longer want resp. no longer are able to perceive the possibilities of governance to the usual extent.

The preservation of the building and archaeological Cultural Heritage will be influenced by this change, but it could also contribute to managing this change, in particular to the much-needed strengthening of the regions. Historic buildings, but above all historical and somewhat uninjured localities and Cultural Landscapes, which still characterize rural areas – despite dramatic losses over the last forty years – can play an important role in the competition with the conurbations. Monuments, in particular also the monuments visible in the landscape, which are closely linked to the cultural landscape, both from prehistoric and early historical times, as well as the monastic and church buildings, which the middle age- and modern structures in Central Europe make only vividly readable, can be of great importance for meaningful leisure activities. This importance is increasing in an ageing society whose Members have a comparatively high proportion of leisure time. Ethnic change will accelerate. The Population of many smaller towns and cities already consists in a not too small part of citizens who, due to their personal, familiar, social, ethnic, spiritual, religious and mental backgrounds, are part of the structural and archaeological background. Testimonies of the history of their host country or their new homeland cannot find a proper relationship. It will be important to convey the value of the structural and archaeological testimonies of their new Homeland, which were created and you can find very often in the Free State of Bavaria, to these fellow citizens to a considerable extent only by the churches and monasteries. It is also important to arouse understanding that specific construction projects, such as a Mosque or an Orthodox Church, take account of the historical townscape, but should also still be possible, legally and in fact!

The future development will significantly affect monuments in ecclesiastical property, for which there is no longer a pastoral necessity. This is to be seen in conjunction with the general trend of De-Ecclesiastisation of Societies. The churches are already considering the extent to which church closures will be necessary and what possibilities are opening up for the use of functionless ecclesiastical buildings. It should be borne in mind that churches are not only worship buildings, but have a formative significance for the identity and therefore the quality of a village.

With regard to the use of resources, it is important that knowledge has developed in many areas in the course of the historical development process, which has been little appreciated in the recent past, but could take on a whole new meaning under changed social, economic and, above all, energy policy conditions. This knowledge is still (!) present in most occupational sectors that work particularly for the preservation of monuments. In addition, it is stored to a considerable extent in the preserved historical buildings.

Due to demographic trends, decay, devaluation and disposal of existing building material will be unavoidable, as has to be seen for some time in most of the (new) Eastern German States. The so-called "dismantling" will affect the fabrication of younger buildings for reasons of the complex German flat infrastructure only. Residential buildings in unilaterally structured areas will lose their value and their attractiveness. It should be understood, that the (new) use of existing building Material or inland brownfield land must be given priority before the designation of new residential and commercial areas. In this context, the historical town centres and thus the material monument substance, especially of churches and monastic buildings, if it is still available, are given a new, outstanding and senseful status especially for a successful development of old (= new) societies and homelands. Churches and monasteries are central and very important parts of the solution insofar!

In order to master these difficult processes of reorientation, the German Monument Protection Laws provides in unison that the ecclesiastical concerns identified by the competent ecclesiastical authority are to be taken into account in decisions of the State Monument authorities, among other things, on monuments directly serving the worship purposes of the churches; only in the absence of recognition of these ecclesiastical matters the decision-making procedure does apply under Article 26 para. 2 of the Bavarian Monument Protection Law (BayDSchG)³.

What is now a “matter of worship”? Within the freedom of religion, in accordance with Article 137 para. 3 of the German Constitution of Weimar (1919), which content is current law by Article 140 of the Constitution of the Federal Republic of Germany (“Grundgesetz”), the Churches are defining what theological, dogmatic and liturgical requirements of worship are. The self-image of the church is of crucial importance to German law.

Nevertheless, the relevance of a measure must be set out in the divine service, must be made clear and justified by the Head of the Church, esp. the Bishop, solely from the factual limitation of this right of self-determination to certain requirements and aspects of worship on the part of the ecclesiastical service. It may be necessary to provide an in-depth explanation of the liturgical functions and their demands on the church building and room, as well as for its equipment.

The Monument protection Authorities are bound by these established ecclesiastical concerns in the case of plausibility, unless the ecclesiastical requirements are contrary to basic principles of the Legal Order, such as those prohibited by general arbitrariness have found precipitation (Article 3 para. 1 Grundgesetz). Article 26 para. 2 BayDSchG strikes an appropriate balance between the state heritage protection contract and the right to self-determination of the Churches. This scales clause legally arranges, demarcates and secures the interaction of the state and the church in the protection of monuments. The decision of the cultic points of view is left to the churches and respected. This guarantees their ecclesiastical freedom of liturgical development guaranteed by the use and excludes a violation of the spiritual dedication and function of the monuments as *res sacrae*. On the other hand, the state interest is also sufficiently taken into account. The procedural link in Article 26 para. 2 BayDSchG ensures cooperation between the Church’s and the State's Protection of Monuments and ensures that the cultic and cultural interests of both decision-making applications are taken into account.

To this cooperative end, the Liturgy Commission of the German Bishops' Conference has given "Guidelines for the Construction and Design of the Holy Service" on the basis of the "Constitution on the Sacrosanctum Concilium" (VATICAN II. Council), updated in 2002. In order to transform empty Church rooms, it makes it binding and emphasizes that "the transformation of historically valuable spaces does not violate the" – initially comprehensively depicted – "legitimate interests of the preservation of monuments and the original building idea. It may be carried out, "even if this is not the normal preservation, but the continuity of the testimony of faith, which must and can continue to be possible as a result of a renewing liturgy. But in this sense, too, the ecclesiastical and state views of the preservation of monuments do share.

It remains to the conclusion, therefore, that the Churches, too, have so far remained satisfied with the worship concerns within the meaning of the VATICAN II. Council and the Guidelines of the German Bishops' Conference. The use and application of scientific methods, which is

³ <http://media.w-goehner.de/1.268%20-%20Denkmalschutzgesetz%20-%20Deutschland%20-%20Normtexte%20-%20aktuell%20-%20Stand%2018.01.2019.pdf>

already specified in the Venice Charter as a historic preservation route, is an essential decision-making aid for the concept of historic preservation. This must in no way result from ignorance, fear, lack of Decision, etc.

Finally, the German States and the Churches together have to seek for common and good solutions in every single case to protect still existing testimonies of what our predecessors had given to us over now more than one and a half thousand years. This Heritage must be respected sensibly!