



HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION.  
BALANCE BETWEEN LAWS AND VALUES





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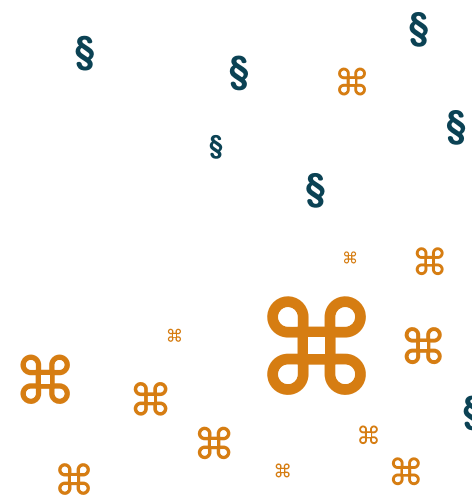
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# THE DEVELOPMENT OF THE LEGAL PROTECTION OF MONUMENTS IN GERMANY

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The paper shows the development of legal protection of monuments in Germany from the very limited princely decrees in the 17th century, different regulations and laws in the 42 states of the German Confederation (Deutscher Bund) from the 19th century, up to the German Reich (Deutsches Reich) and the post World War II legal systems. The legal protection of monuments has become more and more comprehensive. The paper demonstrates how this development is related to the periods of Enlightenment, Romanticism, Historicism and the constitutional rule of law in our democracies.

## A historical outline

Presenting the history of legally codified monument conservation in Germany is very complex because Germany was not a unified state until the 19th century, but consisted of a number of countries. The German Confederation (1815 - 1866) comprised 42 states. A unified federal state was created in 1871. The German Reich, headed by an emperor, was made up of 25 states and Alsace-Lorraine as a territory with a special status. The German Reich changed its form of government several times until the end of World War II (Weimar Republic, centralized government under the Nazis). In 1949 two German states were founded: the Federal Republic of Germany with 11 federal states (hereinafter Länder) and the centralized German Democratic Republic (GDR). In 1990, Germany was reunified. Today's Federal Republic of Germany is a federal state with 16 Länder. Before the background of this history it is only natural that the development of the legal protection of monuments varied regionally and in scope.

Cultural epochs are also reflected in the development of the protection of monuments. During the late Enlightenment, in the second half of the 18th century, monuments were protected primarily as historical documents for the purpose of historical research. In the Romantic era, in the first half of the 19th century, monuments were seen mainly as artistic creations. Historicism, in the second half of the 19th century, finally discovered the Antiquity, the Romanesque and Gothic styles as models for its own contemporary architecture and art. This meant that monuments were to be protected as sources of one's own creative work. Accordingly, the protection of monuments became more and more comprehensive.

First provisions for preserving historical evidence were adopted in some German States in the second half of the 17th century and in the first half of the 18th century. They decreed that historic finds had to be delivered to the authorities and their prime objective was to fill the princely and royal collections. Examples are the edict of the Duke Eberhard III of Württemberg in 1670 and a decree of King Frederick I of Prussia in 1712, which also contained the request to submit historically important findings. Another example is an order from the Palatinate in 1749 for the delivery of antiquity finds against a reward.

The Regulation of the Margrave Karl Alexander of Ansbach-Bayreuth in April 10, 1780 is seen as the first German Regulation on the protection of monuments. It was preceded in 1771 by a similar order. It refers only to crest stones, slabs with inscriptions, grave monuments etc., but includes principles of conservation that are still valid today, in particular: all sections of the population are addressed, in particular civil servants, artisans and the clergy. It obliges them to deal carefully with the "monuments"; the artisans are threatened with "severe punishment" when they do "harm" to the "monuments"; when renovating monuments or when they are in bad condition they should be inventoried; drawings, plans, etc. are to be delivered to a central archive. A similar regulation was issued by Landgrave Friedrich II of Hessen-Kassel in 1779/80. Also other German states adopted rules for the delivery of finds and legislation for inventories after 1700.

Dr. Werner von Trützscher, graduated in law, has broad experience in German ministerial administration especially in the cultural and educational sector as well as in the protection of monuments.



He represented the Federal German States in the Council of Europe, the European Union, UNESCO and OECD. Since 1984 he is engaged in ICOMOS where he held executive positions both nationally and internationally. Founding member of ICLAFI since 1997.

Initial approaches to a comprehensive codification of monument protection are found in the first half of the 19th century. In 1818 in Hessen-Darmstadt a regulation was enacted to preserve the existing monuments. However, it did not apply to monuments in private ownership. Intervention in private property was generally avoided in this period. For state, local and ecclesiastical buildings worthy of protection extensive licensing requirements were imposed, e.g. in Prussia in 1815 and in Bavaria in 1826. Also the Prussian General Land Law of 1794 is to be mentioned here, which contained regulations for the conservation of buildings and monuments and for the approval of new buildings and demolitions, from which historical buildings benefited.

A significant improvement in the protection of monuments brought the creation of the Office of Conservator, meaning monument administrations were installed in various German states. First in Bavaria, where in 1835 a General Inspection of the Sculpted Monuments was introduced and an Inspector General was appointed. In 1843 a Curator of Art Monuments was appointed in Prussia. In 1853 Baden followed, and then Würtemberg in 1858. Initially, the conservators worked only in a secondary function, were financially modestly equipped and had no executive powers. Over the years they developed into the present Offices for the Preservation of Monuments, which today are found in all German states.

In the second half of the 19th century several states drafted comprehensive protection laws, which however were not put into effect. One of these drafts, which later served as an example, was elaborated in 1883 in the Grand Duchy of Baden. This bill included monuments in private ownership, contained specific provisions for immovable monuments, regulated the protection of archaeological monuments and contained provisions for the protection of movable monuments in the public ownership. Offences against this detailed catalogue of duties were punishable. This draft was not implemented because of widespread opposition to monument protection. This opposition came not only from private owners, especially the nobility, but also from the churches who feared a new secularization and by local authorities, who resisted limitations of their rule of self-government.

The first comprehensive conservation and protection legislations in Germany were adopted in the early 20th century; in 1902 in Hessen-Darmstadt, in 1911 in Oldenburg, and in 1915 in Lübeck. Laws protecting only archaeological monuments were issued in 1908 in Bavaria, in 1914 in Prussia and Baden, and in 1917 in Saxony-Weimar-Eisenach. The protection of historical buildings was introduced in the planning laws of some states.

The protection of monuments was embedded in the constitution of the Weimar Republic (proclaimed on 9 November 1918 with 24 federal states) as a state objective in Article 150. Until 1933 protection laws were adopted in some other German states (Hamburg, Mecklenburg-Schwerin). The Reich promoted conservation through its tax

laws: expenditures for conservation could be utilized for tax purposes, thus reducing the tax. A judgment of the Supreme Court of the Reich (Reichsgericht) in 1927 found that enforcing conservation measures on private owners are indemnifiable acts.

Under the Nazis, in 1933 a central government was introduced in Germany and the sovereignty of states was lifted. The state laws however remained in force as particular laws. After World War II, in number of the Länder of the newly created Federal Republic of Germany the new constitutions included the protection of monuments as a state objective. This, however, had barely a concrete legislative impact at first. It was not until 1970 that a reaffirmation of the values of cultural heritage took place not only in Germany, which culminated in the proclamation of the European Architectural Heritage Year 1975 by the Council of Europe. Between 1971 and 1980 all Länder created modern conservation laws or amended existing laws. All these laws institute State Conservation Authorities in the tradition of the conservator offices created in the 19th century, but with more far-reaching powers.

In the German Democratic Republic (GDR), in 1952, the Regulation for the Conservation and Maintenance of the National Cultural Monuments was adopted. 1975 follows a historic preservation law with a socialist definition of monuments (“... physical evidence of the political, cultural and economic development, which have been declared a monument because of its historical, artistic or scientific importance in the interest of the socialist society by the competent authorities in accordance with” the law).

After reunification the present Federal Republic of Germany now comprises 16 states. The 5 new Länder formed on the territory of the former GDR adopted state constitutions all of which proclaim the promotion of culture and/or the preservation of monuments as state objectives. In all the 5 new Länder between 1991 and 1993 conservation laws were created, which are based on the laws of the „old“ Länder of Western Germany, and develop these partially.

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