

Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage

Symposium Proceedings Book



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019

22-24 October 2019
Gaziantep, Turkey





ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

DEFINING THE ROLE OF LOCAL AUTHORITIES IN MANAGING AND PROPAGATING CULTURAL HERITAGE
International Symposium October 22-24, 2019
Symposium Proceedings Book

ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues, ICOMOS Turkey National Committee, Gaziantep Greater Metropolitan Municipality
ICOMOS TR Organising Team: Tamer GÖK, Yasemin SARIKAYA LEVENT, Meltem UÇAR

Compiled by Yasemin SARIKAYA LEVENT
Publication: Gaziantep Greater Metropolitan Municipality

e-ISBN:

- (c) ICLAFI
- (c) Gaziantep Greater Municipality
- (c) Authors of the proceedings

ICLAFI Symposium and Annual Meeting 2019 is supported and hosted by Gaziantep Greater Metropolitan Municipality.
Cover Image: "The Gypsy Girl Mosaic" from the Ancient City of Zeugma (Photo by Nevit Dilmen)



Dear participants, distinguished members of ICLAFI,

We happily welcome you in Gaziantep at the 2019 Symposium and Annual Meeting of the International Scientific Committee on Legal, Administrative and Financial Issues established under the International Council of Monuments and Sites.

Gaziantep has been home to various civilizations throughout the history. Gaziantep region is a place where important civilizations such as Hittite, Roman, Seljuk and Ottoman have lived and left their traces. The uncovered cultural assets in Rumkale, Yesemek, Zeugma, Karkamış and Dülük reveal the historical background of the region and constitute important documents of human history. Gaziantep has been a centre of culture and trade throughout its history and continues to carry out pioneering works in industry, trade and cultural fields in our country.

As Gaziantep Greater Municipality, we are aware of the importance and value of the above-ground and underground cultural heritage elements of the region, and we carry out many projects in order to protect our cultural values and transfer them to future generations. The street rehabilitation works that has started in Bey Neighbourhood in 2008 spread to all streets in the historical city centre. The Culture Road Project, covering Gaziantep Castle and its environs, has been resulted with the active participation of the citizens. Today the historical trade centre continues to contribute to the economic life of the city, with its original function, as an important trade area where traditional products and handcrafts are sold. In the historical city centre, many monumental buildings such as inns and baths are expropriated by the Municipality and re-functioned as museums/traditional production and exhibition centres and opened for public use. Being aware of the importance of public participation and awareness, some of the expropriated buildings were given for the use of women and children, and steps were taken to re-establish emotional ties between society and the historic urban fabric.

The city also has intangible values apart from tangible cultural assets reflecting the historical identity. Gaziantep was included in the UNESCO Creative Cities Network in the field of gastronomy in 2015. In this context, a gourmet restaurant has been opened, where traditional home cooking is made and taught in order to ensure the continuity of traditional culinary culture and to transmit to next generations properly.

Three areas in our region are in the World Heritage Tentative List. In 2012 “Yesemek Quarry and Sculpture Workshop” and “Archaeological Site of Zeugma”, in 2018 “the Underground Water Structures in Gaziantep; Livas' and Kastels” were included in the World Heritage Tentative List. Works on preparing management plan for Yesemek Quarry and Sculpture Workshop is in progress.

The conservation activities lead by the Gaziantep local authorities are carried out mainly by the units established within the Municipality and with the financial resources created by the Municipality. In this context, the Symposium which aims “Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage” and discusses the role of local authorities and the legislative and financial structures of different countries at local level on managing and propagating the cultural heritage, is a up to date and valid topic for Gaziantep.

I hope that the Symposium focusing on the topics of legal and organisational framework, financial issues, managing cultural heritage and capacity building practices and experiences in different countries will create a fruitful sharing environment for everyone.

Fatma ŞAHİN
Mayor of Gaziantep Greater Municipality



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

CONTENTS

Proceedings

Neriman ŞAHİN GÜÇHAN	Conservation of Mount Nemrut as the Driver of the Development of Adıyaman Province	1
Ayşe Ege YILDIRIM	The Turkish Cultural Heritage Management System of Turkey and the Role of Local Authorities: Some Experiences and Reflections	17
Gideon KOREN	Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage: The Israeli situation	25
James K. REAP	The Role of Local Authorities in Managing and Propagating Cultural Heritage in the USA with Examples from the State of Georgia	27
Wojciech KOWALSKI	The Role of Local Government in Protecting Cultural Heritage under Polish Law	39
Werner von TRÜTZSCHLER	Responsibilities and Tasks of the Local Authorities in Monument Protection and Monument Preservation in Germany	43
Riin ALATALU	Defining the Role of Local Authorities in Managing and Promotion of Cultural Heritage in Estonia	47
Thomas ADLERCREUTZ	Local Governments and the Cultural Heritage in Sweden	53
Adrian CRĂCIUNESCU	Role of Romanian Local Authorities in Managing and Propagating Cultural Heritage	63
Etienne CLEMENT	The Management of the World Heritage Site of Angkor in the Siem Reap Province (Cambodia)	71
Mona O'ROURKE	The role of Local Authorities in Managing and Propagating Cultural Heritage: Brú na Bóinne, Archaeological Ensemble of the Bend of the Boyne World Heritage Site – an Irish Case Study	79
Jelka PIRKOVIČ	Local Authorities and Heritage Communities – a Participatory Approach to Heritage Management	101
Jack Tsen-Ta LEE	The Role of Local Authorities in Managing and Propagating Cultural Heritage in East Malaysia	111
Borut ŠANTEJ	The Role of Municipalities in the Protection of Immovable Cultural Heritage in Slovenia	127
Graciela AGUILAR & Maria Marta RAE	A Judicial Court Case in Buenos Aires. Cisterna Moreno 550. Methodology of Heritage Economic Assessment	135
Nikolay LAVRENTYEV & Andrey GAREVSKY	The System of Monuments Protection in Russia: Specific Features and Problems	151
Matleena HAAPALA	The Role of Local Authorities in Managing and Propagating Cultural Heritage in Finland	159
Wolfgang Karl GÖHNER	The Constitutional Role of Local Authorities in Managing and Propagating Cultural Heritage in Germany and Bavaria	167
Svetoslav GEORGİEV	The Role of Local Authorities in Managing and Propagating Cultural Heritage in Bulgaria	175
Yasemin SARIKAYA LEVENT	Cultural Assets Fund as a Financial Source for the Conservation of Cultural Heritage in Turkey	185
Symposium Information		197
ICLAFI Recommendations for Gaziantep Greater Metropolitan Municipality		203
Symposium Photos		207

The Constitutional Role of Local Authorities in Managing and Propagating Cultural Heritage in Germany and Bavaria

Wolfgang Karl GÖHNER

ICOMOS Germany

Wolfgang.Goehner@blfd.bayern.de

Wolfgang Karl Göhner, assessor iuris, is President of the Working Group on Law and Taxes of the German National Committee of Cultural Heritage; Chairman of the European Heritage Legal Forum; Member of the German National Advisory Board for the European Cultural Heritage Year 2018; Chief Legal Officer of the Bavarian State Conservation Office (BLfD).

Abstract:

The protection and care of our Cultural Heritage is a task on behalf of society that transcends boundaries of states and nations. Although, the 16 German States and the Federal Republic of Germany are responsible, within their capabilities, for the formulation, development and enforcement of a policy whose primary objective is to benefit, to combine and to use available scientific, technical, cultural and other resources to protect and preserve cultural heritage, mainly the municipalities shall maintain, preserve and retain all monuments belonging to them, namely building, archaeological sites and other (not only registered movable) monuments in-situ. In protecting monuments, municipalities have an increased responsibility for their own history as well as a key position.

INTRODUCTION

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, after the re-unification of both German States on October 3rd, 1990 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.

Acknowledgement: With many thanks to my dear Colleagues Attorney-in-law Tobias Artzt and Oberregierungsrat Reinhard Mast, M. A., German Administrative Bulletins (Deutsche Verwaltungsblätter [DVBl]) 2011, 443-447.

In accordance with the legal and legislative requirements, the 16 German States and the Federal Republic of Germany are responsible, within their capabilities, for the formulation, development and enforcement of a policy whose primary objective is to benefit, to combine and to use available scientific, technical, cultural and other resources to protect and preserve cultural heritage.

On the other hand, the primary and largely complete responsibility and responsibility of the German "countries" exists, in particular for the policy areas "culture" and "cultural heritage". The constitutions of most of the 16 German "countries" (with the exception of the Free and Hanseatic City of Hamburg) emphasize the protection and active maintenance of the architectural and archaeological monuments as State goals.⁽¹⁾

Monument conservation describes "the statutory and legal task and responsibility, the preservation expert advice and care for the public monument" (see f. e. § 1 para. 1 sentence 2 DSchG Thuringia⁽²⁾). The Monument Conservation laws use both terms at the same time, synonymous and without distinction. Conservation and preservation are public tasks in all German States. The "Grundgesetz" (Constitution of the Federal Republic of Germany, so-called "Basic Law"⁽³⁾) contains no relevant corresponding standard for Culture and Cultural Heritage contrary to art. 150 of the Constitution of the Deutsches Reich, the so-called "Weimar Constitution"⁽⁴⁾. In part, the German States have anchored the monument protection or at least the cultural life in their national constitutions with State objectives terms or sentences⁽⁵⁾. "The task is summarized quite well in § 1 DSchG Bremen: *"Monument protection and heritage conservation have the task to explore cultural monuments scientifically, to maintain, to protect and to promote their involvement in urban development, spatial planning and land care"*⁽⁶⁾. The conservation laws of the German States mostly contain a general task, partly abstract, sometimes related only to the State, sometimes on local authorities resp. the municipalities; in the executing State conservation laws of Bavaria and North Rhine-Westphalia such provisions may be missing due to the existing constitutional requirements of this "Länder". If rules are missing or if gaps e. g. in the field of research exists, these tasks "monument protection" and "preservation" can be revealed from the entire regulatory coherence of the laws. The task is regularly regarded as State task, for the municipalities they are usually established in the sphere of transferred tasks or established as mandatory items under State authority. The true assignment of monument pro-

(1) Hönes, Ernst-Rainer / Göhner, Wolfgang Karl, „Denkmalrecht der Länder und des Bundes - Kommentierungen, Rechts- und Verwaltungsvorschriften“, (abbr. „DmR“), founded by the Interparliamentary Working Group, formerly published by Rudolf Stich and Wolfgang E. Burhenne, with the participation of Peter Rothmund and Reinhard Mast, Erich Schmidt Verlag, Berlin, DmR 1983 ff., suppl. July 2019

RV/B-W 215 01; RV/BAY 220 01; RV/BLN 225 05; RV/BRA 230 01; RV/BRE 235 05; RV/HES 245 05; RV/M-V 250 05; RV/NDS 255 05; RV/N-W 260 05; RV/RH-PF 270 01; RV/SL 275 01; RV/SAC 280 05; RV/S-A 283 05; RV/S-H 285 05; RV/THÜ 290 05

(2) DmR RV/THÜ 290 11

(3) <https://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>

(4) („(1) The monuments of art, history and nature as well as the landscape are assured of the protection and care of the state. (2) It is for the Reich to prevent the exodus of German art possessions abroad.“, http://www.documentarchiv.de/wr/wrv.html#VIERTER_ABSCHNITT02

(5) DmR RV/B-W 215 01; RV/BAY 220 01; RV/BLN 225 05; RV/BRA 230 01; RV/BRE 235 05; RV/HES 245 05; RV/M-V 250 05; RV/NDS 255 05; RV/N-W 260 05; RV/RH-PF 270 01; RV/SL 275 01; RV/SAC 280 05; RV/S-A 283 05; RV/S-H 285 05; RV/THÜ 290 05; Martin, Dieter / Krautzberger, Michael (ed.): Handbook of conservation and preservation. Munich, 4th edition 2017, lit. B II, 4

(6) DmR RV/BRE 235 11

tection to the law of public safety and order (so-called “police law”) is included in § 6 para. 1 DSchG Berlin ⁽⁷⁾ and § 16 para. 4 sentence 1 DSchG Brandenburg ⁽⁸⁾. § 20 para. 3 sentence 2 DSchG North Rhine-Westphalia ⁽⁹⁾ added: *“As such, the tasks assigned to them under this Act apply as emergency response”*.

The conservation authorities and the monument authorities, (in particular still also) the Building Authority are involved in the enforcement of Monument Conservation laws. The municipalities and the security authorities do have additionally further a variety of tasks. Regularly, protection and maintenance of monuments is explicitly named or mentioned in context of regulations as tasks of monument protection and preservation. Also mentioned are in part research, public relations and collaboration with the owners. The special obligation of public authorities (especially for building guide plans, plan findings and in the road construction!) is put forward by almost all “Länder”, most clearly formulated in art. 141 of the Bavarian Constitution ⁽¹⁰⁾, added in art. 83 combined with art. 3 para. 2 of the Bavarian Constitution ⁽¹¹⁾ for the municipalities.

Conservation authorities are regularly services of the so-called “General internal management”. The “Länder” have established also the competent Monument Conservation authorities (in North Rhine-Westphalia: Monument Preservation Offices). They are responsible regularly for the acquisition and exploration of the monuments, the preparation of opinions and the granting of conservational or archaeological professional support to measures. Some “Länder” have yet separate authorities for construction and archaeological monuments. Individual “Länder” grant a degree of professional independence to their Monument Conservation Office. The competent authorities for opinions, advice and consulting are not bound by administrative instructions in Brandenburg and North Rhine-Westphalia; they are entitled to pass their opinion on authorities and concerned parties. In Saxony-Anhalt the Monument Conservation Offices have to consider only professional aspects for opinions and assessments. In other “Länder”, the competent Monument Conservation offices are fully integrated into the hierarchy of authority, and thus are subject to the authority of the superior authority, including the right of instruction.

The monument protection laws contain only a few formulations on the status and the tasks of municipalities; actually, they are the main actors of preservation and conservation in practice. ⁽¹²⁾

Almost all conservation laws (except Mecklenburg-Western Pomerania and Lower Saxony) assigned voluntary advisory committees to the authorities at different levels. They have the task to advise the “Länder”-government (e. g. Bavaria, Berlin etc.) or the law enforcement authorities (such as Hamburg, Hesse) or the competent authorities (such as Bremen). The majority of the “Länder” provided

(7) DmR RV/BLN 225 11

(8) DmR RV/BRA 230 11

(9) DmR RV/N-W 260 11

(10) DmR RV/BAY 220 01; <http://www.gesetze-bayern.de/Content/Document/BayVerf>true>

(11) DmR RV/BAY 220 01; <http://www.gesetze-bayern.de/Content/Document/BayVerf>true>

(12) Martin, Dieter / Michael Krautzberger (ed.): Handbook of conservation and preservation. Munich, 3rd edition 2010, lit. E 13

volunteer officers to strengthen the idea of monument preservation and in particular the integrating of the special historical knowledge and monument knowledge at the local level. Special traditions exist insofar in Bavaria (Local Heritage Conservators) and Saxony.⁽¹³⁾

LEGAL AND ORGANISATIONAL FRAMEWORK IN THE FREESTATE OF BAVARIA

The Bavarian Monument Protection Act⁽¹⁴⁾ (BayDSchG)⁽¹⁵⁾ has not limited its scope with regard to the legal or corporate entities mentioned. According to the principle of the generality of the law derived from the principle of the rule of law, the BayDSchG therefore applies without restriction both to natural persons and to the Federal Republic of Germany (the "Bund"), the 16 German "Länder" and other legal entities (of public law and of the private law), in particular the German municipalities. The binding of the entire executive power to the BayDSchG also results from Article 20 para. 3) of the Basic Law for the federal Republic of Germany ("Grundgesetz", the German Constitution).⁽¹⁶⁾ The entire activity and work of the public-law legal persons must also take into account the special obligations of the public hands for the preservation and the maintenance of the Cultural Heritage in Bavaria. At the same time, the awareness of having to act as a role model for the respective subject-specific public task and to follow a binding guideline is of outstanding importance. In contrast to the use of private property by the single citizen, who also has to serve the common good, the public legal entities have to orient themselves exclusively to the common good, which also includes the interests of monument protection and monument preservation.⁽¹⁷⁾ Here, the principle of subsidiarity enshrined in fundamental rights manifests itself as a directive of freedom-preserving division of labor in the fulfillment of a public task common to state and society. The task assigned to the state does not necessarily consist in comprehensively regulating, administering and financing the matter of the Cultural Heritage. However, due to his ultimate responsibility for the common good, it is unconditionally and incontestably incumbent on him to secure the order: to ensure that the preservation of historical monuments is complied with. The state cannot shift this "monumental responsibility" to others. This responsibility is "fundamentally indispensable".⁽¹⁸⁾ The procedural obligations also apply to monument protection authorities, the Bavarian State Office for the Preservation of Historic Monu-

(13) Martin, Dieter / Michael Krautzberger (ed.): Handbook of conservation and preservation. Munich, 3rd edition 2010, lit. S 14

(14) http://media.w-goehner.de/1.88_-_Bavarian_Monument_Protection_Law_-_27.07.2009_01.pdf

(15) <http://media.w-goehner.de/1.269%20-%20Denkmalschutzgesetz%20-%20Deutschland%20-%20Normtexte%20-%20aktuell%20-%20Stand%2003.05.2019.pdf>

(16) DmR RV/BU 410 05; https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf

(17) Siebertz, Paul, Denk-mal-schutz in Bay-ern (The Protection of Monuments and Sites in Bavaria), Munich Dissertation, 1977, p. 190 f..

(18) Isensee, Josef, Review of the Judgement of January 30th, 2003 of the Supreme Administrative Court of Baden-Württemberg (VGH) - 1 S 1083/00, Die Justiz (JZ) 2004, p. 912 f.; Isensee, Josef, in: Isensee, Josef / Kirchhof, Paul, Handbook of State Law, 3rd edition 2003, § 57 no. 165 ff; Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), Decision of March 2nd, 1999 - 1 BvL 7/91, https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/DE/1999/03/ls19990302_1bvl000791.pdf?jsessionid=DEB8AB3598A092CD820DA34DA76230CC.1_cid394?__blob=publicationFile&v=2; Göhner, Wolfgang Karl, Review of Martin, Dieter / Michael Krautzberger (ed.): Handbook of conservation and preservation. Munich, 1st edition 2004, BayVBl. 2005, p. 32 / http://media.w-goehner.de/1.15_-_BayVBl_1-2005_-_Buchbespr.-_Martin_Krautzberger_Handbuch_Denkmalschutz_und_Denkmalpflege.pdf

ments (with the exception of Art. 7 para. 3 BayDSchG) and the Bavarian Administration of the State Castles, Gardens and Lakes (BSV); they too need appropriate permits. There is no difference between fiscal and sovereign action.

MANAGING CULTURAL HERITAGE: "SITE MANAGEMENT PLANS" AS A TOOL

Art. 3 BayDSchG is of far-reaching importance; it goes far beyond the mere maintenance obligations of the owner due to Art. 4 BayDSchG and, like Article 141 of the Bavarian Constitution, covers the entire activity of the municipalities. It is applicable in the fiscal and public spheres and must be regarded as a binding guideline for the actions of the municipalities.⁽¹⁹⁾ In the fiscal sphere, the municipalities shall maintain, preserve and retain all monuments belonging to them, namely building, land and other (not only registered movable) monuments at least the same way as before, unless, after a sale, the preservation of a monument is permanently in place (for example, by corresponding legal obligation of the acquirer, by servitude, in exceptional cases by agreements under debt law, if the acquirer is required to pass on the obligations imposed on him in the event of a further sale and if the municipality is granted a right to repurchase, guaranteed by reservation, in the event of non-compliance with the conditions). In addition, municipal bodies do not always have sufficient expertise in matters of monument preservation and monument protection. Unfortunately, the fear that municipalities neglect the requirements of the preservation of monuments for financial reasons⁽²⁰⁾ is still current when the Bavarian Monument Protection Act was introduced in October 1973. Appropriate consideration for the interests of the preservation of monuments is also required for the municipality if it wants to sell estates on which there are no built or archaeological monuments, but which are adjacent to monument sites and whose development or other use may lead to an impairment of the nearby monuments foreseeable by the purchaser. If the municipality acquires monuments or land on which monuments are located, Art. 3 BayDSchG also applies to the preservation of these monuments; an acquisition of a monument for the purpose of demolition must be examined from these points of view and will not be in accordance with this provision on a regular basis. Precisely because of the constitutional background in Art. 3, 83 and 141 of the Bavarian Constitution, the obligations of the municipality are therefore much broader and broader than the general (private) ownership obligations under Art. 4 BayDSchG.

In the public sphere, the municipalities must comply with Art. 3 BayDSchG when enacting legal clauses (statutes of all kinds, including building plans, municipal ordinances). This requirement also applies to the enforcement of all legislation (not only of the community's one) and to participation in law enforcement; this includes the obligation to participate in the labelling of Hague Convention⁽²¹⁾ and the obligation to comply with these and other conventions (including the "European Convention

(19) Hönes, Ernst-Rainer, Denkmalschutz - Eine Aufgabe der Gemeinden? (Monument Protection – a Municipality's task?, DÖV, 1979, p.286 ff. und DÖV 1981, p. 957 ff..

(20) Siebertz, Paul, Denkmal-schutz in Bay-ern (The Protection of Monuments and Sites in Bavaria), Munich Dissertation, 1977, p. 193.

(21) <https://unesdoc.unesco.org/ark:/48223/pf0000082464>.

on the Protection of the Archaeological Heritage [Revised]"⁽²²⁾⁽²³⁾ as an international law or German Federal law.⁽²⁴⁾ Art. 3 BayDSchG is, above all, a requirement of conduct for friendly and respectful behaviour towards monuments, especially if the municipalities are given discretion; this will regularly result in strict observance of the protection of monuments and (archaeological) sites.⁽²⁵⁾

The urban development, in particular the building development plans, is becoming increasingly important in connection with the continued reorganization or so-called "deregulation" of the Building Codes of the German Länder, as the tendency is to pursue projects in the scope of building development plans from the building regulations permit requirement; however, the obligation to grant a permit under monument law has not been removed. The importance of the provision of Art. 3 BayDSchG lies in the fact that it seeks to encourage municipalities to develop a forward-looking activity for the preservation of monuments, because, if necessary measures are planned in good time, many monuments and archaeological sites are considered to be preserved in-situ as Bavaria's cultural heritage; the building monuments and archaeological sites in the municipal area must be regarded as a legal situation, that is, not only by the respective (private or public) project promoter, but also by the municipality already in the process of drawing up the urban development plan, that the development provided for there is subject to prior security of the building monuments and archaeological sites.⁽²⁶⁾ With regard to this obligation to actively prevent damage, alteration and destruction of monuments, the local right to self-government (Art. 28 para. 2 Federal Basic Law [GG], Art. 11 para. 2 of the Bavarian Constitution [BV]) is required by these existing natural and legal conditions ("pre-encumbrances"). It is possible that, on the one hand, the municipal planning authority may end at natural building borders such as lake shores or hillsides, but on the other hand, at existing legal boundaries, such as nature conservation and flood areas, restrictions on municipal self-government rights are to be tolerated right down to its core, especially if not any kind of planning is excluded.⁽²⁷⁾ Regularly, this will have to be assumed if further local development is possible, at least in the interior (§ 30, 34 Federal Building Code [BauGB]).⁽²⁸⁾

(22) <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007bd25>.

(23) German Federal Law on the "European Convention on the Protection of the Archaeological Heritage [Revised]", BGBl 2002 II, 2709 et seq. / https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl__%2F%2F%5B%40attr_id%3D%27bgbl202s2709.pdf%27%5D__1566660797237.

(24) Bavarian Superior Administrative Court (BayVG), Judgement of June 4th, 2003 - 26 B 00.3584, juris; Göhner, Wolfgang Karl, Review, DSI 2003/4 pp. 73-77 / https://media.w-goehner.de/1.05_-_BayVGH_-_Urt._v._04.06.2003.pdf; Schweitzer, Michael, Statement of the Centre for European Law at the University of Passau of July 6th, 2004 for the Society of Archaeology in Bavaria reg. association, pp. 2-3, not published; Dietrich, Reinhard, DSI 2004/3 S. 8; German Federal Constitutional Court (BVerfG), Decision of October 14th, 2004, NJW 2004, 3407-3412 / <https://openjur.de/u/174491.html>; Göhner, Review, DSI 2005/4, 65 ff. / http://www.dnk.de/denkmalerschutz_preise/n2393?node_id=2399&from_node=2413&beitrag_id=269.

(25) Similar to the Monument protection Law of Northrhine-Westfalia (DSchG NW): Superior Administrative Court of Northrhine-Westfalia (OVG NW), Judgement of May 18th, 1984 - 11 A 1776/83, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=665.

(26) Bavarian Administrative Court (BayVG) Munich, Judgement of September 14th, 2000 - M 29 K 00.838, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=983; Göhner, Wolfgang Karl, Review, DSI 2003/4 p. 77 ff. / http://media.w-goehner.de/1.05_-_BayVGH_-_Urt._v._04.06.2003.pdf.

(27) Bavarian Constitutional Court (BayVerfGH), Judgement of June 14th, 1985 - Vf. 20-IX-85, BayVBl 1985, 523-530 / https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=666.

(28) Bavarian Administrative Court (BayVG) Munich, Judgement of September 14th, 2000 - M 29 K 00.838, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=983; Göhner, Wolfgang Karl, Review, DSI 2003/4 p. 77 ff. / http://media.w-goehner.de/1.05_-_BayVGH_-_Urt._v._04.06.2003.pdf; Federal Supreme Administrative

A skilful interplay of the various municipal standard-setting possibilities from urban planning, building planning and building regulations (sub-legal regulations, f. e. through building plans, conservation statutes, conservation and modernization bids, refurbishment statutes, building regulations and, in some German countries, special regulations on the protection of monuments, the law on the misappropriation of living spaces), may even have significant positive effects for the effective protection of cultural heritage without recourse to the protection authorities. In protecting monuments, municipalities have an increased responsibility for their own history as well as a key position. Often the paths through the aforementioned instruments are more effective than a restriction to the power norms of the Monument Protection Act (BayDSchG). With these legal design standards, municipalities have opened up possibilities that go far beyond the often blunt legal bases of the specialist laws.⁽²⁹⁾ Already through their urban development planning and the land use plans, the municipalities can set the course for conservation and care, but also, if necessary, for the development of their town centres, sites, monument areas and individual monuments. They can define the corresponding objectives of their urban development, for example by keeping visible axes, placing construction and commercial areas, and steering traffic flows. From these planning instruments, binding specifications in building plans can be developed, among other things, for the type and extent of the building, restrictions on use, design, etc.⁽³⁰⁾ Municipalities are therefore also entitled, *inter alia*, to ensure that the licensing, enforcement and supervisory authorities comply with and implement their local regulations, in particular their design statutes.⁽³¹⁾

FINANCIAL ISSUES

In accordance with the constitutional requirements, Art. 22 para. 2 BayDSchG also expressly states the obligation of local authorities to contribute to the costs of monument (and sites) protection and preservation of monuments and sites within the scope of their capacity. The participation consists in the provision of budgetary resources, including, where appropriate, the provision of work services, such as the municipal building authority or municipal boulder's yard. The obligation is ultimately based on Art. 141 para. of the Bavarian Constitution (BV). The municipalities cannot comply with the obligation to participate under Art. 21 para. 3 BayDSchG by referring to their contributions to the special fund under Art. 21 para. 2 sentences 2, 3 BayDSchG, half fed by the Free State of Bavaria and the Bavarian municipalities, the so-called "compensation fund"⁽³²⁾, because both obligations are explicitly coexisting.

Court (BVerwG), Judgement of July 22nd, 2004 - 7 CN 1/04, <https://www.bverwg.de/220704U7CN1.04.0>; Superior Administrative Court (OVG) of Saxony-Anhalt, Judgement of April 17th, 2003 - 2 L 150/02, https://www.judicialis.de/Oberverwaltungsgericht-Sachsen-Anhalt_2-L-150-02_Urteil_17.04.2003.html.

(29) Superior Administrative Court (VGH) of Hesse, Judgement of November 9th, 1995 - 4 UE 2704/90, <https://openjur.de/u/291285.html>.

(30) compare to the development bid according to § 8 Abs. 2 Federal Building Code (BauGB): Bavarian Superior Administrative Court (BayVGH), Judgement of October 15th, 2003 - 26 N 99.3785, BayVBl 2004, 530 ff. (Revision: Federal Supreme Administrative Court [BVerwG], Decision of February 19th, 2004 - 4 BN 4.04, <https://www.bverwg.de/190204B4BN4.04.0>).

(31) Federal Superior Administrative Court (BayVGH), Judgement of July 30th, 1997 - 14 B 95.3645, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=756.

(32) "Entschädigungsfonds"

All local authorities are obliged by Art. 22 para. 2 BayDSchG; in addition to the municipalities, the districts and the districts are therefore also obliged. According to the system of Art. 22 sec. 2 BayDSchG, the three municipal levels are cumulatively obliged to work side by side, since the BayDSchG is alien to a classification of monuments. The special regulation of Art. 22 sec. 2 BayDSchG precedes the general regulations of the Bavarian County Code (BayLKrO)⁽³³⁾ and the Bavarian District Code (BayBezO)⁽³⁴⁾.

The obligation of local authorities applies within the limits of their capacity. This obligation is constitutionally entrenched by Art. 3 para. 1, Art. 83 para. 1, 2 of the Bavarian Constitution (BV). It would therefore be inadmissible to unilaterally shift the benefits of local authorities to the detriment of the costs of the preservation of monuments; for, in particular, in the constitutional context of the cultural state principle and the binding state objective of the maintenance and substantial preservation of the common cultural heritage under Art. 141 of the Bavarian Constitution (BV), this goal is by no means a subordinate obligation. However, one of the primary obligations of the municipalities in particular is the preservation of the (local) cultural heritage.

The nature (grants, loans, etc.) and the extent of the municipal participation in the costs of conservation measures are in principle left to the local authorities and to decide by themselves within the framework of their right of self-government. However, support on a "reasonable scale" is needed; the municipality is obliged to include adequate grant funds in the municipal budget.⁽³⁵⁾ In essence, the same principles may be used to justify the calculation of State grants. In addition to, the budget size of each local authority, the scope of a measure, the possibilities of a builder to provide his own services, the overall financing within the financing plan, but also the importance and the scope of the measure for the public and the territory of the individual municipality or the municipal association are going to be crucial. For example, the services of a district may not be made dependent on the services of the lower municipal levels, since this criterion is not specific to monuments or archaeological sites and is therefore not appropriate. Similarly, the Bavarian Monument Protection Law (BayDSchG) does not give municipalities the opportunity to limit themselves to the "small" preservation of monuments or to chapels or to farmhouses, for example, or to reject support in general, if a measure is supported by the special investment funds, the so-called „compensation fund". Municipalities with a low density of monuments will normally be required to participate more than municipalities with a high level; the latter are in any event disproportionately burdened by the obligations of Art. 22 para. 2 BayDSchG.

(33) <https://www.gesetze-bayern.de/Content/Document/BayLKrO>true>.

(34) <https://www.gesetze-bayern.de/Content/Document/BayBezO>true>

(35) See Bavarian Administrative Court (BayVG) Bayreuth, Judgement of July, 7th, 1983 - B 2 K 82 A.918, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=360.