“Very Old and Unusual”. The Development of the Term “Monument” in German and Russian Legislation

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Introduction

The recognition that the architectural heritage bears an inestimable witness to the common European past and constitutes an irreplaceable expression of the richness and diversity of Europe’s cultural heritage[1] underlies national cultural policy in Germany and Russia as well as national law. What is meant by “the past”, however, is much less obvious in the German and Russian heritage preservation practice. Are contemporary experts even in a position to judge whether creations from their period deserve to be preserved for posterity? Or is a certain distance in time – for instance of one generation – necessary in order to adequately appreciate the significance of a building? In terms of cultural policy, there may be good reason not to let pass too much time before they are granted legal protection status, at least for masterpieces of architecture: This is the only way in which heritage preservation authorities can prevent or at least control use-related changes – which sometimes occur soon after the completion of a building. In contrast, from a legal point of view, the content of the legal definition of monument is decisive: if a certain time limit is immanent in this definition, this could put a stop to an “anticipatory” heritage preservation practice.

The legal development in the Russian Empire

“Everything that is very old and unusual” – this formula was used in the Russian Empire at the beginning of the 18th century to describe objects that were to be reported and delivered to the local authorities in order to complete state collections.[2] Artifacts from the time before the Polish invasion were considered “very old”, so that an age of about 100 years was sufficient to consider an object worth preserving.

In the 19th century an increasing attention paid by both the state and the public to the architectural relics of the previous epochs[3] was reflected in numerous efforts to preserve “patriotic monuments”, without there being consensus on which edifices should be protected, for what reasons and how. So, it is no wonder that the legal acts of the state institutions and the appeals of the historical societies expressed different ideas about the nature of the historic and cultural heritage and operated with different notions of monuments.

The use of the terms “antiquity” and “ancient monument” in Russian monument conservation practice in the 19th century was associated with the idea of having to protect historic buildings and archaeological sites from destructive projects and looting due to their age and the rarity value associated with this age, but also due to their value as authentic sources for the research of earlier epochs.[4] It was in keeping with this understanding that the first state monument protection authority – the Imperial Archaeological Commission, founded in 1859[5] – was commissioned to search for, research and scientifically evaluate objects that “were primarily related to the history of the fatherland and the lives of the peoples who once inhabited the space now occupied by Russia”. The temporal distance required to classify an object as an “ancient monument” initially varied, depending on political developments: In contrast to the time of Peter the Great, the time boundary shifted further into the past since the expansion of Russian rule to the Crimean peninsula and the northern Black Sea coast – and the sites of Greek and Roman antiquity located there. For example, the decree of the Committee of Ministers “On the preservation of ancient monuments in Crimea” of 4 July 1822 stated that in Taurida it was not so much the Turkish and Tatar monuments “close to our time” that deserved state care as rather the Greek and Genoese monuments. The question of how old an object had to be in order to be preserved for posterity was also answered differently by state and non-governmental monument preservation institutions, some of which operated in parallel in the second half of the 19th century. For example, the Imperial Archaeological Commission looked after objects from before 1725.[6] On the other hand, the monument protection commission of the Moscow Society for Archaeology – an honorary institution, founded in 1870 – regarded the year 1800 as the boundary for the classification of a building as “historic”.[7]

In addition to the “age value”, the central criterion in Russian monument preservation practice of the 19th century was the “historic and memorial value” of an object, i.e. its relationship to historic events and personalities. Public interest therefore focused primarily on places and buildings that were mentioned in the sources as the scenes of key events in Russian history or were particularly closely connected with the rise of the ruling dynasty. The monument preservation movement was thus not only intended to serve the historical science, but also to meet the need for objects that would create a national identity. This was connected with the idea that a building or work of art could remind us of significant historic events and thus be a “historic monument” even if it was not itself a contemporary witness of these events. This view comes to light in the draft monument protection law that was discussed in 1877, according to which contemporary works of monumental art that were supposed to recall certain historic events – for example the monument “Russia’s Millennium” in Novgorod only erected in 1862 – should also be regarded as “historic monuments”. Until today it is

still controversially discussed whether the understanding of the preservation of monuments as part of a comprehensive culture of remembrance was thereby expressed, or whether the recognition of works created on behalf of the ruling elite for the purpose of its own legitimacy as national cultural assets was merely intended to strengthen the positions of power of this elite.[8]

The legal development in the German Reich

The development of the monument legislation in the German Reich was also marked by considerations of a necessary time limit. The Monument Law of the Grand Duchy of Hesse-Darmstadt, adopted on 16 July 1902, which is regarded as the first modern monument protection law in Germany, generally described architectural monuments as objects in whose preservation there was a public interest for historic, in particular art historic reasons. Apart from that, the Hessian law didn't fix any minimum age of monuments, but rather opened up the option of defining a specific age limit by means of a separate regulation. The State Monument Council installed in Hesse-Darmstadt pleaded against the enactment of such a regulation, although it considered a regular time interval of 30 years from the monument's origin to be appropriate.

In Prussia, on the other hand, the Circular of the Minister of Spiritual, Educational and Medical Affairs and of the Minister of Public Works of 6 May 1904 laid down that monuments were to include all "remains of past artistic periods" if they were either "purely historic" or "important for an understanding of the culture and artistic concept of past periods", or "of significance for the picturesque image of a place or a landscape" or "exemplary for the creativity of the present in the field of fine arts, technology and crafts". According to the Circular, state protection was to cover the "works of all completed cultural eras", the last of which was to be completed around 1870.

The change of the definition of monument in Soviet legislation

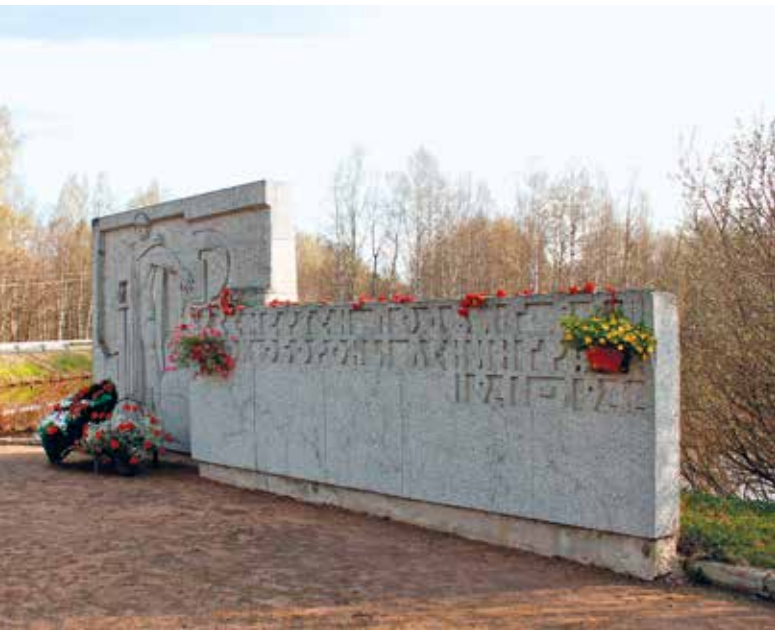
After the efforts in the Russian Empire for a modern monument protection law based on the Western European model ultimately failed due to the outbreak of the First World War and the Revolution, these approaches were taken up again by the new rulers after 1917. The slogan issued by the revolutionary movement, "Let us renounce the old world", was initially not successful in dealing with cultural heritage. Instead of a clear content-related separation from the earlier understanding of monuments, traditional concepts and categories were used in legislation and above all in administrative practice. As early as 1918, a government decree on the protection of monuments of art and antiquity was issued,[9] followed by a further decree on the protection of natural monuments three years later.[10] In the government decree of 7 January 1924[11] and the subsequent Instruction of the People's Commissariat for Education[12], these two objects of protection were treated together, while architectural monuments, archaeological monuments, museum objects and parks and gardens were defined as subcategories.

In the 1920s, for the stocktaking the state heritage authorities used the epochs of Russian architecture: the historic building stock was initially divided into four categories according to importance, starting with architectural masterpieces and ending with other buildings merely typical of the period. For the classification the building material – wood or stone – and the time of origin were decisive. The highest category (so-called "unique examples") only included architectural masterpieces, the first category stone buildings from before 1612 and wooden buildings from before 1700, the second category stone buildings until 1725 and wooden buildings until 1825 and the third all objects from later periods. Depending on the rank determined, the scope of protection varied from a comprehensive obligation to preserve all components of the uppermost category to the preservation of only individual components of those of the third category.[13]

When at the end of the 1920s – especially after the tenth anniversary of the October Revolution – the ideological penetration of the monument preservation practice increased, this manifested itself in a clear focus of state protection on objects with ideological significance as carriers of a hero cult developed by the state and party leadership, while at the same time neglecting supposedly "ideologically foreign" monuments and sites.[14] New types of protected objects were introduced, such as the "Monuments of the Revolution", the "Monuments of the Civil War", and the "Monuments of the Red Army". It was about protecting buildings or places that were supposed to commemorate events that the Soviet regime regarded as groundbreaking. For example, the development of the object category of "Monuments of the Civil War" was connected with the intention of the Central Committee of the Communist Party to publish a complete work on the history of the Russian civil war and the resulting desire to capture, secure and valorise battlefields of war, e.g. at Petrograd, Caricyn and on the Crimean peninsula.[15] The fact that the battles to be commemorated here were less than two decades old was apparently not perceived as an obstacle.

Historic monuments also retained this exceptional character in later Soviet administrative practice. For example, as early as 1942 – at the height of the German-Soviet war – the Museum Department of the People's Commissariat for Education of RSFSR decided to list the sites of battles, resistance nests and war graves as future historic monuments. The implementation of this idea followed in the post-war period, especially in the Brezhnev era, when the collective commemoration of the Great Patriotic War had advanced to a state task. The "places of remembrance", i.e. war memorials, which were erected mainly in authentic theatres of war and often using original defensive positions,[16] were in practice treated as objects of monumental protection just as buildings and works of art from earlier centuries. Thus, the memorials built around Leningrad at the end of the 1960s to commemorate the siege – the "Green Belt of Glory" – were listed just a few years after their completion.[17]

The USSR's Monument Protection Law of 29 October 1976 also took account of this politically intended interweaving of traditional monument protection with the state commemorative culture. According to Article 1 of the Law,



Figs. 1 and 2: St Petersburg, the Green Belt of Glory, "Sestra Memorial", 1960, listed in 1974 (© Dimitrij Davydov)

the generic term "historic and cultural monuments" included "buildings, places of remembrance and objects connected with historic events in the lives of the peoples of the USSR, the development of the State and society, works of material and intellectual creation that have historic, scientific, artistic or other cultural value". Historic monuments as a subcategory are described in Art. 5 of the Soviet Monument Protection Law as objects that should bear witness to "the revolutionary movement, the Great October Socialist Revolution, the Civil War, the Great Patriotic War, the socialist and communist construction, the strengthening of international solidarity".[18]

The legal development in post-war Germany

The understanding of monuments as testimonies of completed historic and cultural eras inherent in monument law since 1900 was also taken up in the development of legislation after the Second World War. A notable exception was the Baden Monument Protection Law of 12 July 1949, which declared objects of "old and new origin" to be monuments. The legal definition (Art. 2, paragraph 1, sentence 1) described monuments as "works or structures by human hands which deserve to be preserved by the general public in so far as they form sources of knowledge for the beings, becoming, living, creating or fates of a human community or in so far as they are capable of impressing feelings and emotions and of acting in an exemplary or otherwise educational manner, be it through artistic design, masterly execution, individuality or age, be it through the memories associated with them, be it through the communication of a lively illustration of creative acting and change of culture or as a landmark and value of the homeland". In the administrative regulation issued by the Baden Ministry of Culture and Education it was explained that the authors of the law did not want to restrict the public interest in conservation to the historic and scientific significance of an object alone, but also wanted to include objects in the circle of monuments which, for example, had an educational value as sources of aesthetic enjoyment or as exemplary achievements. The controversial question of whether the concept of monument should be extended to contemporary creations was thus to be answered "in a positive sense".

However, later on this concern of the Baden legislator was not taken up again. Other West German monument protection laws were based on the conventional idea that monuments had to be things "from bygone times", e. g. the Schleswig-Holstein Monument Protection Law of 7 July 1958. In the administrative regulation for this law issued in 1960 it was made clear that "creations of the present" should be covered by the law 30 years after their completion at the earliest. The Monument Protection Law of Baden-Württemberg, which replaced the Baden Monument Protection Law in 1971, also operated with a cultural monument definition that, according to official justification, focused on the "traditional cultural heritage".

The assumption that a placement under protection requires a certain distance in time was also reflected in the jurisprudence of the administrative courts dealing with proceedings under monument law. In Bavaria, for example, the Higher Administrative Court links the notion expressed particularly by Wolfgang Eberl[19] that the object must come from a "completed historic epoch" with the formulation "from a bygone era" (Art. 1 para. 1 of the Bavarian Monument Protection Law). In its judgment of 10 June 2008, which dealt with the monument value of a commercial building in Munich erected in 1985 according to a design by Matteo Thun, the Court stated that restraint is required if contemporary buildings not belonging to a "completed period of art or architecture" are to be placed under protection.[20] If the time limit of monument protection were to move "too close to the present", the Court argued, this could lead to a "museumisation of life". The result would be an unreason-

able restriction of the owner's room for manoeuvre, which would be difficult to reconcile with the constitutional property guarantee. And so, in the end, the Higher Administrative Court regarded postmodern architecture as a stage of architectural development that had not yet been completed at the time of the decision.[21]

Even in those federal states whose laws, unlike the Bavarian Monument Protection Law, do not prescribe any kind of time limit, courts have so far predominantly assumed that monuments must, according to the will of the respective legislator, be material testimonies of past epochs. For example, the Higher Administrative Court of North Rhine-Westphalia – based on the legislative material – decided that the legislator was primarily concerned with the protection of "historic substance worthy of preservation from destruction and loss" when passing the Monument Protection Law. That's why, the Court said, monuments should be placed under state protection in their capacity as "visible signs of identity for the dimension of history".[22] From this, the Court derived the conclusion that all characteristics of the legal concept of monument in North Rhine-Westphalia have the category of being historic in common.[23] The understanding of the historic value as an overarching characteristic which radiates to the other monument value categories can also be inferred from the jurisprudence of the administrative courts in Lower Saxony. The Higher Administrative Court of Lower Saxony, for example, in its decision on the memorial site at the Synagogue Square (Synagogenplatz) in Wilhelmshaven, stated that the monument protection focuses on the safeguarding of historic edifices in the broadest sense. It's about using those buildings as documents of historic epochs and developments, the Court argued, in particular in the history of art or architecture, but also general or social events or periods of time. A building that does not document this, but only refers to an earlier state – the formerly existing synagogue – cannot be a monument itself.[24]

Fig. 3: Düsseldorf, Dreischeibenhaus (1957–1960), listed in 1988 (© LVR-Amt für Denkmalpflege im Rheinland, Silvia Margrit Wolf)

The Administrative Court in Düsseldorf held a different position in the 1990s. In the decision concerning the so-called Dreischeibenhaus in Düsseldorf, an office building, erected 1957–1960 according to a design by Hentrich, Petschnigg and Partners, the Court initially left open whether the application of the monument definition in North Rhine-Westphalia necessarily presupposes a temporal distance of one generation, and thus of about 30 years.[25] This question was not decisive in the dispute over the Dreischeibenhaus, since the temporal component was already fulfilled here. In a later decision, however, the court confirmed that even a building that was only erected 22 years ago – the Rank-Xerox-Haus in Düsseldorf-Lörik, also built to a design by Hentrich, Petschnigg und Partner between 1968 and 1970 – can be a monument in North Rhine-Westphalia as a "contemporary document of architectural history". The Court has now expressly opposed the idea that the concept of monument, due to its inherent historic dimension, presupposes that the object worth protecting must come from the past, however far back in time, or even from a completed historic period. Rather, in individual cases younger, "even contemporary" objects could also be monuments, primarily due to being a particularly outstanding or even unique architectural achievement.[26]

The legal situation in the Russian Federation

In the Russian Federation, the Federal Law № 73 of 25 June 2002[27] introduced a new generic term – "object of cultural heritage" – which, however, was combined with the previously used term "historic and cultural monuments" to form a unit.[28] This – and the hierarchical structuring of the monument stock into three classes according to the territorial principle: monuments of federal, regional and local significance – was intended to express a certain continuity between the Soviet and the new Russian system of monument protection, even though the former ideological orientation was completely abandoned. However, the criteria for the recognition of monuments were reformulated. In order to be worth preserving, fixed objects had to be "the result of historic events", "and valuable in terms of history, archaeology, urban planning, art, science, technique, aesthetics, ethnology, anthropology and socio-culture", "a testimony of epochs and civilizations and an authentic source of information for the emergence and development of culture".

Fig. 4: Düsseldorf, Rank-Xerox-House (1968–1970), listed in 1994 (© LVR-Amt für Denkmalpflege im Rheinland, Silvia Margrit Wolf)

The legal requirement that an "object of cultural heritage" must "have arisen as a result of historic events" has a significant practical consequence: according to Article 18 paragraph 12 of the Russian Monument Protection Law of 2002, an object must ordinarily be at least 40 years old in order to be included in the State Cultural Heritage Register. This time limit is extended to 100 years for archaeological objects, while a rigid time limit is waived for so-called "memorial dwellings", i.e. the dwellings of well-known personalities, with the result that such a dwelling can already be designated as an "object of cultural heritage" after the death of the corresponding person.

Even if buildings from the period of "advanced socialism" have exceeded the 40-years mark in the meantime, they will only rarely be found in the official monument lists. In St Petersburg, for example, it is noticeable that outstanding buildings from the 1960s and 1970s which have been included in architectural guides for years due to their design quality or innovative construction, such as the Sport & Concert Complex (1967–1980) and the River Yacht Club (1960–1980)[29] are not listed as "objects of cultural heritage". One cannot help wondering whether this circumstance is merely due to the current progress in monument listing or whether it reflects a disregard for the architectural testimonies of this period.

Final remark

Everything that is "very old and unusual" has as a rule long found its place in the official lists of monuments in Germany and Russia. The fact that this legal status alone does not provide protection against higher-ranking interests or human failure is impressively demonstrated by the monument losses of recent years, such as the destruction of the Dormition Church in Kondopoga or the Paland Manor, a moated castle in Erkelenz. Remarkable buildings of comparatively low age, however, are often not even awarded this official recognition. Consequently, they can disappear at any time from the townscape – without social discussion, without consideration of mutual interests and without previous scientific documentation. It has therefore not yet been established that "new and unusual" objects must automatically be protected as historic monuments. However, it is difficult to deny that it may be the subject of monument protection without one having to fear a "museumisation of life".

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