

## Dissonant Heritage versus Consonant Heritage: All Equal before the Law?

Gregor Hitzfeld

People are usually happy to affirm their support for the preservation of historic monuments when they think of castles and palaces, picturesque old towns, splendid town halls, or an old flat in the chic turn-of-the-century neighbourhood of their city. They probably have in mind power and splendour, spaciousness and elegance, or the simplicity and solidity of past and better times. This heritage quite naturally has its place in our urban spaces and cultural landscapes, as well as in our collective perception and acceptance.

However, if you point out to people that the heritage of our ancestors, the history and self-image of our country and possibly the foundations of our social prosperity also include inconvenient layers of history that have left traces everywhere and which, at least from the point of view of monument conservators and historians, also have a right to exist and to be preserved, then these people usually show irritation, if not even rejection: “But that’s ugly!” “Is that what you want people to be reminded of?” “What if the wrong people misuse these historic testimonies for their unsavoury present-day goals?” What are we supposed to do with testimonies of wars and dictatorships, with walls, fences, bunkers and labour camps? With memorials and sites of self-representation of fascist regimes, colonial oppression, or socialist fraternisation?

Obviously, we have monuments that are loved or at least appreciated by our society, and monuments that are unloved or even rejected. These are two categories of monuments, if we want to call them that, which are perceived and valued differently. Nonetheless, both categories have their *raison d’être*, at least among experts. From the point of view of these experts, but of course also in the eyes of many people, we as a society, as heirs, as enlightened citizens, have the duty to protect both heritages and both categories of monuments.

However, despite this insight and this commitment to an inconvenient history, our monument inventories almost exclusively contain monuments on whose heritage status the public agrees, while there are only a few in the monument lists that our societies reject. Moreover, these controversial monuments, even if they have made it into the inventories, are mostly neglected, damaged or left to decay.

On the basis of this knowledge, this article will explore the question of whether this obvious discrepancy between dissonant and consonant monuments, both in the total number of listed monuments and in their state of preservation, is based on legal grounds that justify such a distinction. Are there gaps in our heritage protection legislation that do not even allow an appropriate equal treatment of convenient and inconvenient monuments? Or is the unequal treatment ulti-

mately based on the decision-making scope of the responsible authorities or the directives of political decision-makers?

To answer these questions, I would like to briefly illustrate that the international legal foundations, which are intended to ensure a minimum level of protection for our common cultural heritage, are formulated in such a way that they bind the nation states and require them to grant the same protection to their national heritage, without any distinction. I would then like to demonstrate how these international obligations can be implemented, or have been implemented, at the national or regional level, using the example of the Berlin Monument Protection Act.

### The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict – UNESCO 1954

As the earliest international agreement of some acceptance concerning the protection of cultural property and monuments, I would like to begin by discussing the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which has been signed so far by over 130 states.

In Article 1 of the Hague Convention, we find a definition of cultural property. According to this definition, cultural property is movable or immovable cultural property which is of *great importance* for the cultural heritage of every people, such as architectural, artistic or historic monuments of a religious or secular nature, archaeological sites, groups of buildings which as a whole are of historic or artistic interest.

Depending on one’s perspective and open-mindedness, this definition may also include inconvenient heritage that has historic or artistic significance only for a minority. However, the inclusion of cultural heritage understood in this way in the scope of protection of the Convention is not mandatory. Depending on the sovereignty of interpretation, the “great importance for the cultural heritage of every people” can also be denied to the individual dissonant heritage without further justification.

I conclude from this that although the Hague Convention laid an early, international foundation for cultural heritage protection in the signatory states, the wording of the Convention is not so precise that this would sufficiently secure protection of dissonant heritage in our countries. Due to the barrier of “great importance for the cultural heritage of every people”, the Convention does not guarantee the protection of less outstanding monuments at regional and local levels.



Fig. 1 Berlin, Olympic Stadium, photo Matthias Suessen, 2020

### **International Charter on the Conservation and Restoration of Monuments and Sites – the Venice Charter of 1964**

According to the 1964 Venice Charter, the concept of a historic monument, as defined in Article 1, “embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to *great* works of art but also to more *modest* works of the past which have acquired cultural significance with the passing of time.”

The primary aim of the authors of the Venice Charter was to lay down generally applicable rules for the conservation of monuments. They focused less on a selection of what was worth preserving and defining the cultural heritage to be handed down. Nonetheless, according to the wording of the Charter, the authors explicitly refer their demands not only to cultural property of the highest value or outstanding significance, but also to “modest works” that have acquired cultural or historic significance “with the passing of time”. Thus, the Charter seems to include monuments that are unattractive, controversial, rejected, but draw their claim to be preserved from a significance that bears witness to a “significant development or historical event”; therefore, also for developments and events that are still stressful, that still divide or still are contested.

However, it must be summarised that the Venice Charter was “only” written by participants of an international con-

gress of architects and monument conservators. It does not constitute a binding agreement that obliges states to also adequately protect modest works and testimonies.

### **Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) – UNESCO 1972**

The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, which more than 190 states have declared binding, refers to monuments, ensembles and sites “of *outstanding universal value*”. I dare to say that such universal value can only be attributed in exceptional cases to the dissonant heritage discussed at this conference. For the less significant monuments, the World Heritage Convention therefore offers no legal basis to demand protection and conservation from the competent authorities.

### **European Charter of the Architectural Heritage – Council of Europe 1975**

With the European Architectural Heritage Charter of 1975, the Council of Europe proclaimed in the “European Heritage Year” that “Europe’s architectural heritage includes not only our *most important* monuments”. However, even if we want to derive from this definition that the Council of Europe also demands the protection of dissonant monuments, the Coun-



Fig. 2 Berlin Wall, East German border guard watching the clearing of the Kubat Triangle, photo: Neptuul, before 1989

cil only formulates a recommendation to governments that is not binding.

### Convention for the Protection of the Architectural Heritage in Europe (Convention of Granada) – Council of Europe 1985

In 1985, the ministers responsible for architectural heritage within the Council of Europe concluded the “Convention for the Protection of the Architectural Heritage in Europe”, the so-called “Granada Convention”. Here, for the first time, the signatory states are obliged to comply with certain minimum standards in the legal, financial and personnel resources for the preservation of monuments and to take joint precautions for the protection of the cultural heritage: the monuments to be protected are to be recorded and maintained in inventories (Art. 2). The parties undertake to implement appropriate supervision and authorisation procedures to ensure the legal protection of the properties concerned and to prevent protected properties from being defaced, destroyed, or left to deteriorate (Art. 4).

However, according to Art. 1, the obligations of the Granada Convention explicitly refer only to “all structures of conspicuous historical, archaeological, artistic, etc... importance [...]”. Provided that not only undisputed landmarks and icons can claim the rank of conspicuous importance, the Convention does not seem to make any distinction between dissonant and consonant heritage, but requires protection for both categories.

### Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) – Council of Europe 2005

The Faro Convention extends the Council of Europe’s existing conventions on cultural heritage. It was presented to the Council of Europe member states in 2005: While the previous conventions deal with how to protect and conserve cultural heritage, the Faro Framework Convention deals with the value that cultural heritage has for society.

The Faro Framework Convention is not legally binding in the sense that it imposes obligations and requirements on the





Fig. 3 Berlin, State Security prison in Keibelstrasse, photo Bimarz

parties. Instead, it is a “cultural policy guide” that formulates recommendations and goals for the implementation of concrete measures and activities to be incorporated into national legislation in the longer term.

The Faro Convention also does not explicitly deal with our historic monuments and the cultural property to be inventoried. It takes a much broader view of the entire European cultural heritage. Nevertheless, it may serve as a basis for interpreting what we in Europe, or in the area of application of the Convention, may, but also must or at least should include in our common cultural heritage.

The Convention defines in Article 3 “The common heritage of Europe”: “The Parties agree to promote an understanding of the common heritage of Europe, which consists of: a) all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity, and b) the ideals, principles and values, derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law”.



Fig. 4 Berlin, buildings in Karl-Marx-Allee (formerly Stalinallee), photo Hitzfeld, 2018



Fig. 5 Berlin, former wiretapping installations on Teufelsberg, photo A. Savin, 2013

This definition of common European cultural heritage points out two things: Cultural heritage does not only include works of outstanding historic or artistic value as formulated in the Granada Convention, but also works that simply constitute a source of remembrance, understanding or identity. And this source of remembrance may be based on experiences made through progress, but also through conflict.

In my view, the Convention makes it clear that even dissonant heritage recalling conflict-ridden experiences has its justification!

And, the Convention continues in Art. 4: “The parties recognize that: ... (b) everyone, alone or collectively, has the responsibility to respect the cultural heritage of others as much as their own heritage, and consequently the common heritage of Europe (...).”

The Convention thus declares it to be a general obligation for everyone, for all of us: even if the cultural heritage does not speak for us personally, does not reflect our own history, our understanding of nation, our taste in architecture, or our perception of the value of a monument. Even monuments



Fig. 6 Berlin, Palace of the Republic, photo Dietmar Rabich, around 1990

that mean something to others are to be respected! Or, in summary, even dissonant heritage has its justification!

And, through Articles 7 and 12 it becomes clear that cultural heritage to which different stakeholders attach different or even contradictory values has its justification and that the authorities and responsible offices must work towards a rapprochement, or at least mutual respect.

Most of the states of the European Council have signed the Faro Convention, including our host country Bulgaria. Germany, however, is one of the few states that have neither ratified nor signed the Convention. This is an omission that cannot be justified.

## European Union

Last, I would like to mention the European Union. The EU has limited powers in respect of cultural heritage. The role of the European institutions is generally limited to financial support, coordination of joint projects and efforts, and sharing of knowledge. The EU has contributed to raising awareness about preservation, conservation and restoration issues, technological research and scientific progress in technological solutions. Furthermore, cultural heritage has been taken into consideration in numerous resolutions, recommendations, declarations or EU funding programmes, underlining, *inter alia*, the necessity of the protection of cultural heritage, its role for democracy, society and economy.

But no document of the EU has ever obliged its member states explicitly to identify and protect their national, dissonant or uncomfortable heritage.

## Summary

Looking at the international legal frameworks in summary, it should be noted that there is no binding set of regulations that explicitly calls for the protection of dissonant, controversial or less prominent monuments. There are, however, recommendations. And with the Faro Convention, there is even a framework convention of the Council of Europe that sets far-reaching goals for the implementation of concrete measures and activities that are to be incorporated into national legislation in the longer term. On the other hand, the international regulations are not worded in such a way that they explicitly exclude the consideration of the disputed heritage and only protect the good and beautiful.

This résumé leads us to the question of whether it is possible that so little controversial heritage is found in our monument lists because the criteria for protection in our national or regional monument protection laws are too narrowly defined? Perhaps we need new or additional categories in the canon of our legal categories of significance in order to make the protection of controversial or inconvenient heritage easier to understand, and thus easier to support? Categories such as “dispute value of monuments”, as “identity-forming” or “democracy-building”?



At this point, I would like to briefly discuss this question using the example of Berlin's law on the protection of historic monuments.

The Berlin Monument Protection Law was codified in 1977, two years after the European Monument Protection Year of 1975 and on the basis of the recommendations of the European Charter of the Architectural Heritage. From the very beginning, the Berlin Monument Protection Law also included the inconvenient heritage in its scope of protection.

According to this law, a monument is a building or part of a building whose preservation is in the public interest because of its historic, artistic, scientific or urban significance.

Unlike many international agreements, the law does not require that the monuments be of outstanding, special significance or of increased value to the people. Initially, it is sufficient that one of four criteria is fulfilled: namely historic, artistic, scientific or urban significance.

The Berlin experience proves that especially the criterion of historic significance is sufficiently broad or leaves room for interpretation to also include controversial and inconvenient heritage under this criterion.

Because these monuments mostly have historic significance as documents of a period of time. They can be proof of an incriminating and burdened history, witness of perpetrators and victims, documents of state terror and human tragedies. They are memorials to what was and to what could happen again.

As the capital of various German states and empires, Berlin was unfortunately strongly marked by the changeable and ominous German history in the 20th century. Today, many testimonies to this history are listed for their historic and/or artistic or urban significance: evidence of the Third Reich such as the Berlin Olympic Stadium (Fig. 1), Tempelhof Airport or the Deportation Ramp Grunewald; documents of the division of Germany, especially the Berlin Wall and the former border fortifications (Fig. 2); the traces of the GDR's system of repression, such as the State Security prison in Keibelstrasse (Fig. 3); or the architecture of the Allies, such as the buildings on Karl-Marx-Allee (the former Stalinallee) (Fig. 4) or the Congress Hall, and the legacies of the Cold War like the wiretapping installations on Teufelsberg (Fig. 5).

However, Berlin's experience also shows that the historic, urban or artistic legitimisation of these unloved buildings as part of our heritage alone does not automatically lead to their listing and to their effective protection, because these

buildings do not simply have to be identified and inventoried. In addition to a profound knowledge of history, especially the history of architecture and art, the listing requires above all courage: *courage* to acknowledge uncomfortable truths and to face up to uncomfortable history; and courage to challenge an indifferent or dismissive society and its political representatives, to hold up a mirror to them, to remind them and to demand that they acknowledge their history. This requires independent, scientific specialist authorities that can act *independently* of the instructions of a mayor or governor.

This professional and scientific independence of the authority responsible for the registration is, for example, not given in Berlin, unlike in other German federal states. In Berlin, the governing mayor, the responsible senator, or state secretary can prevent or obstruct the registration of a monument by giving instructions to the specialist authority. This led, for example, to the loss of the Palace of the Republic (the parliament building of the former GDR) (Fig. 6), to the removal of the statue of Lenin, and to the years-long delay in listing the wiretapping installations on Teufelsberg.

I would like to end my discourse with the recognition that our legal foundations, be it the international framework agreements and conventions, or the national heritage law derived from them (at least in Germany), do not make an explicit distinction between dissonant/difficult heritage and consonant/easy-to-handle heritage. In fact, the vague legal terms, such as the categories of historic or artistic significance common to all laws, leave sufficient room for interpretation to cover and protect both categories of monuments equally.

Further, I conclude that the perceived imbalance in our inventories is mainly due to the fact that decision-makers find it easier to protect consonant monuments than dissonant monuments. In my opinion, this dilemma can only be compensated for if committed monument conservators, contemporary witnesses, citizens, universities, etc. do not give up reminding us constantly and repeatedly why even dissonant heritage must play a significant role in our culture of remembrance.

#### Credits

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