ties and various other museums and galleries. A court is naturally cautious to grant charitable status to trusts when the significant tax advantage motive underpins the plea for charitability. In the context of charitable trusts pertaining to monuments and sites, the removal of such financial burdens is undeniably attractive but it is obviously wise as well as candid to ensure the (supposed) charitable purpose and (alleged) public benefit are the central and unambiguous kernel of the trust, and reason for the trust, when aspiring to charitable status.

Conclusion

In conclusion, the law of trusts presents a novel paradigm for continental lawyers unfamiliar with its somewhat idiosyncratic frames of reference. In the specific context of monuments and sites we are to be grateful that the English law often sees fit to privilege trusts for immovable cultural heritage as either valid non-charitable purpose trusts or charitable trusts. It is to be hoped that the criteria discerned from the trusts case law for the creation of both valid monument purpose trusts and charitable trusts are sufficiently comprehensible to an international audience to be practically useful should the occasion of the use of the trust mechanism arise. In the course of the continued contemporary private sponsorship of museums and sites within the jurisdictions of the Anglo-American legal family, the Equitable framework for favourable and efficient handling of monument and site issues is now more predictable in practice than some of the older seemingly *ad hoc* case law decisions may appear to indicate. The trust is a benefit for the genuine not a snare for the unwary.

Footnotes

1 Equity is a branch of the English law which, before the Judicature Act 1873 came into force, was applied and administered by the Court of Chancery: the field of equity is delineated by a series of historical events, and not by *a priori* plan or theory. The division between law and equity is less marked than it was over a century ago, but it is still necessary for various reasons to know whether a rule originates at law or in equity. There is not space to deal with those here. See, further, Pettit, *Equity And the Law of Trusts*, (4th. ed.), Chapters 1 and 2.
2 Many attempts have been made to define a trust but none is completely satisfactory. See, further,*Halsbury's Laws of England* (3rd. ed.) Vol. 38, pp. 809-810; also Underhill, *Law of Trusts And Trustees* (13th. ed), p.1, and Keeton and Sheridan *Law of Trusts* (10th. ed.), pp. 2-6.
3 [1932] 1 Ch. 38.
4 The "perpetuity rule" is one of the ways in which the English law has insisted on the observance of a practical policy against the tying up of property for an undue length of time. Its detail need not be considered here.
5 *Infra*, Charitable Trusts, main text.
6 (1856) 25 L J Ch 424.
7 [1876] WN 170.
8 See note 4 *Supra*.
9 (1907) SC 231.
10 (1915) SC 426.
11 [1960] Ch. 232.
12 [1952] Ch. 534.
13 Fourth Report (1955), s. 53.
14 More officially known as the Statute of Charitable Uses.
15 [1891] AC 531 at 583.
16 [1955] AC 572.
17 [1891] Ch. 252.
18 [1923] 1 Ch. 243.
19 [1954] 1 WLR. 546, [1954] 1 A11 ER 887.
20 [1965] Ch. 85.
21 *Re Parker* (1859) 4 H & N 666.
22 *Re Manser* [1905] 1 Ch. 68.
23 *Hoare v Osborne* (1866) L R 1 Eq 585.
24 *Turner v Ogden (1787) 1 Cox 396.*
25 *Attorney-General v Oakover* (1936) 1 Ver. Sen. 536.
26 *Re Vaughan* (1886) 33 Ch. D. 187.
27 *Attorney-General v Bishop of Chester* (1787) 1 Bro. CC. 444.
28 See *Re Verrall* (1916) 1 Ch. 100; *Re Cranston* [1949] 1 Ch. 523.
29 *Harrison v Southampton Corp.* (1854) 2 Sm. & G. 387.
30 [1972] AC 601.
31 ICTA 1970 s. 360.
32 ICTA 1970 s. 250 (4).
33 FA 1977 s. 55.
34 CGTA 1979 S. 145

FRANZ NEUWIRTH

Funding the Restoration of the Architectural Heritage

The Austrian Experience

Austria is a federal state – it consists of nine federal provinces *(Länder)*. In compliance with the Austrian constitution protection of monuments falls within the scope of federal administration whereas questions of regional planning, building regulations (including townscape care) and nature protection fall within the legislation and responsibility of the federal provinces. European levels of national, regional and local administration correspond within the Austrian borders to federal authorities, provinces and municipalities. Most taxes are collected by federal authorities and refunded to regional and local governments through tax compensation although regional and local governments have the right to collect taxes within their scope of interest in certain cases.

Monuments – grants and tax deductions

Monument protection in Austria is regulated by the Law for the Protection of Monuments enacted in 1923 and amended in 1978 and 1990. Monuments according to this law are all immovable and movable objects created by man whose pres-

ervation is of public interest because of their artistic, historic and further cultural importance. The Federal Office of Historical Monuments *(Bundesdenkmalamt)* is given the authority to decide if such a public interest exists. This office is under the authority of the Federal Ministry for Education and Cultural Affairs, which also has responsibility for appeals in administrative proceedings.

A special characteristic in Austria is that for objects within public ownership (federal and regional authorities, local communities) and for the property of religious communities this public interest and therefore their protection is given in principle in the form of a legal presumption as long as the Federal Office of Historical Monuments does not state the contrary after having decided the matter upon request of the owner. Monuments within private ownership, however, must be officially designated as of public interest by the *Bundesdenkmalamt.* Criteria for listing, however, are the same, whether the object is within public or private ownership.

Such a monument officially designated as protected may not be demolished without the permission of the *Bundesdenkmalamt,* may not be altered in its appearance, and the sale or mortgaging of the monument need the permission of the *Bundesdenkmalamt* (in case of public ownership) or prompt reporting to the *Bundesdenkmalamt* (in case of private ownership).

Although Austrian legislation does not contain any obligation by the owner of a monument for its maintenance the purposeful neglect of necessary preservation work which could be afforded is punishable.

Federal subsidies may be granted for maintenance and restoration of listed monuments although there is no legal claim for them. This kind of grant is given in most cases for costs exceeding normal maintenance expenditure for upkeep, repair, restoration and revitalization of monuments. Although in special cases higher federal subsidies are granted, an average of 12 % of eligible costs may be expected.Therefore the average amount of a federal grant lies under the percentage of normal value added tax (20 %). Besides this federal grant, for which only monuments listed according to the Federal Law for the Protection of Monuments are eligible, the applicant may receive considerably higher public subsidies as regional and local authorities grant public subsidies for the same objects.

The 1990 amendment to the Law for the Protection of Monuments and the 1989 Tax Legislation amendment *(Abgabenänderungsgesetz)* allow monument owners certain tax benefits for expenditures within the scope of preservation and conservation in the form of an anticipatory write-off. Depending on the source of income (free profession, agriculture, trade or leasing and letting) certain costs can be deducted from income taxes equally over a ten-year period (compared to 25-50 years for normal houses) if the monument is used for commercial purposes, or equally over 15 years (compared to 67 years for normal houses) if the monument is let or rented. The Federal Office of Historical Monuments must certify that deducted costs cover work that was in the interest of preservation. The purchase of a monument is not considered as an expenditure eligible for this tax deduction.

The *Bundesdenkmalamt* is also responsible for cultural assets of archaeological and prehistorical value. Archaeological findings have to be reported and fall automatically under preservation legislation for six weeks after discovery. Afterwards the *Bundesdenkmalamt* decides if a public interest in its preservation is given in the particular case. Emergency excavations which have to be carried out after such findings also may be supported by federal grants.

Donations to the Federal Office of Historical Monuments can be deducted from income tax rating up to 10 % of the previous year's income after the 1988 Income Tax Law. However, any designation indicating which monument should receive the money can be only a proposal but not a precondition for the donation.

Townscape – facade restoration program, townscape preservation funds

A special kind of public support for the restoration of facades *(Fassadenrestaurierungsaktion)* is granted by the Federal Ministry for Education and Cultural Affairs. This special funding possibility is supported by federal, provincial and local government in cooperation. Eligible for this subsidy ranging from 30 % to a maximum of 60 % of eligible restoration costs are village and town facades whose preservation has been considered as desirable by the *Bundesdenkmalamt* on request of the respective community. Undoubtedly the aim and purpose of this initiative is to improve the ambiente not only of monuments but also of their surroundings and to achieve an improvement of townscape in general. This initiative is not only carried out in towns but also in villages thus being an appropriate support for the Council of Europe's campaign for the preservation and maintenance of the rural architectural heritage.

It has already been stressed that building legislation is in the jurisdiction of the federal provinces. In consequence each federal province has its own building regulation which explicitly takes care of the preservation of townscape. The legal possibility to protect ensembles by the federal law on historic monuments was only achieved after its amendment in 1978. Thus the federal provinces adopted different laws for the protection of townscapes and historic town centers.

In 1972 Vienna (which also constitutes one of the nine federal provinces) passed an amendment to its building regulation providing zones of protection for historic areas. Simultaneously a Historic Town Center Preservation Fund *(Altstadterhaltungsfonds)* was established and fed by a 10 % tax on radio and television fees (radio and television in Austria are not private). Allocated by an advisory board the fund can be applied to loans, interest payments, securities or grant aid for preservation work within the protected zones that is not eligible for financial assistance through other city or federal programs and that is beyond the financial means of the owner. Refloating loans are fed in the fund.

In 1967 the town of Salzburg became the first Austrian city to adopt regional legislation to protect the historic town center *(Altstadterhaltungsgesetz).*

In 1974 similar laws followed for the city of Graz and the province of Salzburg. Within a certain zone of protection no changes are permitted without consent.

Historic Town Center Preservation Funds have been established in the respective towns to support preservation measures within the protected zone which are in the public

interest. In Salzburg property owners have a legal claim to support from the fund, to the extent that additional costs were incurred because of the obligations of the supervising Historic Town Center Commission *(Altstadterhaltungskommission)*. Additional costs are defined as those that exceed the normal building code. The funds consist of appropriations from the towns and appropriate provinces (varying from a 60:40 to a 50:50 ratio), repayments of loans made earlier, proceeds from the fund's assets and foundation donations.

In 1976 the federal province of Tyrol enacted a similar Historic Center Preservation Law followed by the provinces of Styria in 1977 and Carinthia in 1979.

Among the most notable community preservation efforts are the measures undertaken by the town of Krems in the province of Lower Austria. Krems, which was one of the three Austrian pilot projects presented on the occasion of European Architectural Heritage Year 1975 together with the towns of Salzburg and Rust, has for a long time participated (through an advisory committee) in the permit process for all cases involving new construction, demolition, renovation or minor alterations (such as facade repaintings) in the historic center. In 1959 the town initiated a grant program for rehabilitation. In order to prevent hardships on low and middle income tenants because of renovation measures in the historic town center, a program of rent assistance in publicly owned buildings was established in 1960. An ordinance in 1974 supplemented this program by focusing on the subsidy of the unprofitable aspects of renovation, such as the cost of temporary relocation of tenants during the construction period.

The community of Krems has established a revolving fund to provide private owners with interest free loans for restoration work on facades. The loans have to be repaid half yearly within ten years.The respective debt is rated in the deed pool on the last place. This seems to be the only example in Austria where after establishment and an appropriate initial period such a revolving fund is largely fed by repayments.

Buildings older than 20 years – Improvement Law for Housing *(Wohnhausverbesserung)*

Within the framework of the Federal Law of Housing Improvement *(Wohnungsverbesserungsgesetz)* the federal provinces have issued ordinances by which the improvement of housing conditions and insufficient sanitary installations of housing units older than 20 years is supported by joint federal and provincial loans, annuity interest and lodging allowances and suretyship. Landlords, owners and tenants may apply for public grants for apartments which must not exceed a certain maximum size. In accordance with the income and size of the supported family and the amount and kind of sanitation work, support may be given up to the entire costs of work carried out. The amount of a grant depends also on legislative provisions such as for instance the different provincial laws for townscape protection. In cases of particular need rent support can be granted whenever an increase of the rent which became necessary to cover the costs for revitalization cannot be afforded by the tenant of the apartment.

Such grants are given for practically all measures for improvement and restoration for apartments not exceeding a certain maximum area and under the condition that the costs of the improvement of the apartment do not exceed comparable costs of a new apartment and that the rent expected by the restoration may seem economically reasonable:

- Construction of common installations such as elevators, central heating, central laundries, connection with long distance heating systems.
- Improvement of existing or construction of new water and energy supply and sanitary units
- Division of bigger units in order to gain small and medium sized apartments.
- Modification in buildings to create small and medium sized apartments.
- Improvement of thermal and acoustic insulation.
- Measures to improve the residential needs of the old and handicapped.
- Construction of shelter rooms.
- Necessary conservation and restoration measures in old apartments in old buildings.

Development and extension of buildings – Housing Promotion Law *(Wohnbauförderung)*

In compliance with the provisions of the Federal Law on Housing Promotion *(Wohnbauförderungsgesetz)* the federal provinces are to subsidize or to encourage the construction of small and middle sized apartments through new constructions or additional changes of existing buildings (development and extension) as well as through development and changes of existing buildings which are to be preserved under the Federal Monument Law or provincial laws for historic town center preservation.

As is the case with the Housing Improvement Law, this law is also aimed only at housing and gives support only to measures providing apartments or units up to a maximum size (130 to 150 square meters) or families whose annual income (depending on the number of children) must not exceed a certain level. In contrast to the Housing Improvement Law only landlords and owners are eligible though there are exceptional provisions in some federal provinces where also tenants are eligible for support of the development of attics and lofts. Support may be given as loans, annuity and interest allowances and suretyship.

This law has proved to be an important support for the revitalization of monuments and old structures which mostly need additional space by development and extension in order to meet the new requirements and to gain a financial balance of the project.

Improvement areas – urban redevelopment legislation *(Stadterneuerungsgsetz)*

The application of the provisions of the urban redevelopment legislation differs in practice, since it is seldom applied in the province of Lower Austria for instance, whereas most of the renovations in the federal province of Vienna are financed by provisions of this law.

The Federal Urban Renewal Law *(Stadterneuerungsgesetz)* provides for the designation of renovation districts and improvement quarters by the respective community. In accordance with the provisions of this law grant aids are being provided for up to 70 % of the total costs as well as loans for 12 years with an interest of 7.75 % (compared to the normal bank interest of 16 % average).

Besides mere renovation measures there is also support covering the preparatory investigation of buildings, architectural competitions, reports, construction of common garages, the costs of informing the involved population and public, as well as coverage of special costs (e.g.temporary relocation of tenants during construction period).

In case of single objects which are of greater importance for the townscape support may be given up to the full amount of the special measures which are necessary to meet these townscape requirements.

There are also certain tax benefits similar to those of the Federal Law for the Protection of Monuments. The costs of measures which are required by the Urban Renewal Law can be deducted from certain kinds of taxes.

Special regulations within rent legislation – Rent Law *(Mietengesetz)*

The strong tenant's protection provided in the Austrian Rent Law dates back to World War I and the time of crisis afterwards and regulates tenancies of small and medium sized apartments. The severe protection of tenants (there were cases reported of tenants letting their apartments or rooms to lodgers and charging them higher rents than they paid themselves) naturally caused a certain disinterest among landlords and owners in the maintenance of old buildings which were not likely to yield any profit. In consequence many objects were in a very neglected condition, causing a negative impact on the townscape.

According to the new rent legislation this strong protection of tenants is only valid in case of old tenancy agreements (dating from before the new rent legislation was enacted). This new rent legislation, according to which maximum prices for rents depend on the equipment of an apartment and the urban situation of the house, has to be applied for new contracts.

Amendments to the Rent Law enable in certain situations tenants to force landlords – or landlords to force tenants – to undertake measures to improve housing conditions. Grants for such modernization work within a housing unit can be obtained by either the landlord or the tenant according to possibilities mentioned earlier.

In case of listed buildings or protection according to one of the townscape protection laws or similar reasons of public interest, rent restrictions may be suspended in cases where the apartment is rented to a new tenant if the owner of the object has invested considerably in the restoration of the building. With this provision buyers are stimulated to invest and owners become interested in repairing historic buildings.

The Federal Law on Housing for Young Families *(Startwohnungsgesetz)* provides interest free loans for a period of 25 years up to the actual costs of restoration and repair work to obtain adequate modern housing conditions in rental apartments. These loans are granted under condition that the effective area of the apartment does not exceed a maximum of 90 square meters, the apartment has not been constructed after 1945 and that the applicants are not older than 30 years and their annual income does not exceed certain limits defined by the law.

Tax benefits – exemptions from the tax rating system *(Bewertungsgesetz)*

Rating values for real estate (buildings and parks) whose maintenance is of public interest because of their importance for the arts, history or science, especially listed buildings, have to be rated with only 30 % of their normal value if their average maintenance costs exceed the achieved income and further advantages.

Conclusion

The previously mentioned possibilities of funding the architectural heritage are quoted without indication of specific figures. Without knowledge of the detailed framework of federal, provincial and communal administration in Austria, such figures would mean nothing to a foreigner who does not know their background. (Figures on grant aid for monuments are without significance for the question of the total cost of funding the architectural heritage, for instance, since many monuments are in the possession of federal authorities which have to cover their maintenance from their normal budget and do not receive any grant aid at all. Nevertheless such costs would have to be rated also under funding the architectural heritage. However these figures do not appear in any budget under this item.)

In addition some remarks to illustrate the problems arising from the previously described financial system, which should help to benefit from the experience gained in Austria:

- Practical experience in funding of monuments shows a tendency away from many minor subventions as low percentage contribution to both high percentage support of important monuments and the full support of special pilot works. Especially the latter are of highest importance for the monuments. Support of preliminary research on the monument by experienced craftsmen and restorers makes tendering easier and guarantees a higher level of restoration work and a more precise calculation.
- Facade Restoration Campaigns proved successful and have been in many cases the decisive initiative towards townscape preservation and the sensitizing of the inhabitants. They must not lead to mere cosmetic treatment of facades with new construction behind. Such "Potemkin villages" are not the aim of support. In contrary they are thought of as an initiative for improvement of townscape and ensemble.
- Support of thermal and acoustic improvements in historic buildings has given rise to a problem. The conditions of support are based mostly on standards of new construction or new parts. However the standards refer to high rise buildings with figures that never occur in monuments and historic centers. Thus construction practices which have proved successful for centuries seem to be outdated at

once. It is necessary to enact special regulations for historic buildings in order to avoid a double danger: Either historic buildings do not correspond to the specific standards and subsequently are not eligible for this kind of support or disturbing parts that meet the requirements are incorporated into monuments thus impairing their appearance.
- Besides the aforementioned cases no tax benefits are provided for the restoration work on historic buildings whose maintenance is of public interest (the preservation of monuments is by law defined as being of public interest). Possible economic use of monuments is strictly checked by the likeliness of future profits. If no profits are forecast such an enterprise is treated as "voluptoire", i. e. hobby, and looses eligibility for the tax benefits of an economic enterprise.
- The anticipatory write-off provided by the tax legislation Amendment Law *(Abgabeänderungsgesetz)* from 1989 is not applicable to wage earning owners. This is a hardship for a large group of monument owners. A possible extension of tax benefits to this group is desirable. This would be a benefit to the Minister of Finance because the resulting increase of turnover would result in higher income from value added tax (and by the way reduce moonlighting).
- There is still a series of supports by regional, provincial and federal authorities in connection with the development of tourist traffic, foundation of enterprises and sanitation of rural assets which have not been mentioned in this report. All these cases have to be checked for their real benefit to the architectural heritage. This checking of eligibility is necessary because in certain cases it may have a detrimental effect on monuments by supporting only new construction for instance.
- Public support of monument owners without financial means is desirable; however, supporting the acquisition of monuments by people without the financial means necessary for their upkeep is problematic because it inevitably leads to subsequent public support which would mean an enhancement in value of the monument for its owner without the latter's contribution. In order to avoid possible speculation, this enhancement in value would have to be regarded as a profit when the monument is sold later.
- Regular publication of redundant monuments would be desirable in order to attract possible buyers and investors.
- Saving through building and loan associations *(Bausparkassen)* for housing promotion is publicly supported by tax write-off and can be considered as a kind of revolving fund. It has only begun to be also available for restoration work and should be more widely advertised.

LÉONARD AHONON

Protection and Maintenance of Monuments: The Contribution of Organizing Sponsorships in Benin

The cultural heritage is and will continue to be the memory of a country. That is why, all over the world, its protection and maintenance constitutes one of our main preoccupations, whatever the difficulties (financial or other) that may confront a country. To achieve that aim, several processes are adopted, both from the government and from the private sector. In the case of Benin, what is the national approach through the legal possibilities of sponsorship and its practical realization?

The monuments and sites in Benin are composed of:
- Traditional constructions (depending on each region); examples include Kétou, Musée Honme Porto-Novo, Ganvie, Palais royaux d'Abomey and the Tata from Atacora.
- Colonial buildings of Portuguese architecture; examples include the mosque of Porto-Novo and the trading post of Ouidah.
- Some natural sites such as the waterfalls in Tanougou and Kota in the north of Benin.

Regarding management of the protection and maintenance of monuments in Benin, three cases can be considered:

The civil service: The main monuments and sites which have national importance such as the palaces from Port-Novo, Abomey, etc. and the big door Akaba Edena from Ketou belong to this category. They receive special treatment concerning protection and maintenance because a conservation specialist is on the spot. The funds devoted to this work come either from the state, from international or non-governmental organisations (e.g. the UNESCO). The technical central structure which is in charge of those monuments is the Cultural Heritage Direction at the Ministry of Culture and Communication of Benin.

The local communities: Those monuments and sites with regional importance and those constructed nowadays belong to the local communities. The Cultural Heritage Direction offers its technical competence to these local communities in order to preserve and conserve such cultural heritage, but the local communities are obliged to search for the necessary funds themselves.

The families: In this last case, the monuments and sites continue to be the informal properties of those families and lots of problems remain regarding their protection and maintenance. Among those problems we can note:
- There is a lack of technical competence to engage in correct restoration work.
- The necessity of contacting a professional conservationist is not always understood by the families.