

Notes

- 1 Las demás son Patrimonio Folklórico, Patrimonio Documental y Patrimonio Artístico (Art. 1 de la Ley No. 318 del 14 de junio de 1968).
- 2 En un evidente lapsus, esta vivienda fue declarada "Monumento Histórico" mediante la Ley No. 241 del 19 de noviembre de 1984.
- 3 Estas declaratorias, además de haber sido hechas en base a factores o elementos de juicio heterogéneos, son irregulares y de pleno derecho, inexistentes. El Reglamento No. 4195 del 20 de septiembre de 1969 de la Oficina de Patrimonio Cultural estatuye claramente en su Art. 7 que los bienes pertenecientes a la categoría "Patrimonio Monumental" serán designados como "Monumento Nacional" por ley. Contrariamente, todos estos inmuebles han sido declarados por decreto y con una denominación diferente a la de "Monumento Nacional".

Con este proceder, el Poder Ejecutivo ha invadido la esfera del Poder Legislativo, organismo que, legalmente, es el único con facultad para incluir dentro de la categoría de "Monumento Nacional" aquellos inmuebles que reúnan las condiciones para ser denominados como tales.

Lo establecido en un texto legal sólo puede ser válidamente modificado por otro texto legal. El Poder Ejecutivo se ha subrogado la competencia que otorgó al Congreso Nacional; no ha derogado el Reglamento No. 4195, por lo que lo estatuido en su Art. 7 conserva todo su valor.

- 4 Colección de Leyes, Resoluciones, Decretos y Reglamentos de los Poderes Legislativo y Ejecutivo de la República, año 1970, Tomo I, Imprenta J.R. Vda. García Sucs., Santo Domingo, 1971, p. 422
- 5 Delmonte Urraca, Manuel "San Pedro de Macorís: "Sultana" que despierta, conservando sus viejas características y encanto", Listín Diario, 16 de julio de 1989, p. 12.
- 6 Art. 1 Decreto No. 1397 y Art. 1 del Reglamento No. 4195.

SOPHIE MOUSSETTE

Sponsorship and its Legal Forms in France

First of all, I would like to thank the German National Committee of ICOMOS and the University of Katowice/Poland for the organisation of this seminar on legal structures of private sponsorship and participation in the protection and maintenance of monuments. I would like to greet the speakers who have dealt with the issue of the legal forms in their own country. It was very important to have a comparative view of the legal forms.

I am going to explain the different legal forms in France. Prior to that, I raise again the importance of private sponsorship in France: In fact the private sponsorship granted by firms is evaluated at about 800 million francs. For private persons, it is very difficult to know exactly the value of their expenses; it is about one or two billion francs. These numbers concern all the "public interest" sectors, such as culture, health, the environment, etc.

When studying firms' sponsorship, we can observe that protection and maintenance of monuments is often chosen by the firms: 9 % of the firms' choice is the protection of monuments. Some actions are focused on monument restoration or archeology. For example, the foundation "Pays de France" created by the *Credit Agricole Bank* helped rural monument restoration. Another example is that a number of firms concentrated their efforts on restoring the old Stock Exchange in Lille, the Parliament of Bretagne in Rennes that burned in 1995 or the old leaded glass windows in the Cathedral of Chartres.

Some firms have chosen the restoration of works of art in museums. *The Paris National Bank* is interested in this sector, in collaboration with E.D.F. The *Elf* foundation has focused its work on submarine archeology, particularly at the site of Alexandria. The *Rhône Poulenc* foundation gives its support to monuments in the Imperial city of Hué, in Vietnam.

The scope of the legal forms in France is a challenging and difficult question, which raises other ones: what is the definition of these legal forms? What kind of legal forms belong to the sector of protection of monuments?

First I want to talk about the associative sector. It is the most important and diversified one. There are three sorts of associations, according to the law:

- Undeclared associations, without any legal status.
- Declared associations, ruled by the 1901 Act.
- Public utility associations, specially registered, which constitute a small part of declared associations.

We know very little about undeclared associations: churches or informal neighbourhood groups. Declared associations are the most widely spread category. The 1901 Act is the most liberal and flexible legal status of the French law. And it is the main reason why this status has not changed ever since. Very diversified organisations chose that legal status, individual persons have created legal associations to restore monuments or to buy pictures for museums. (The most important is *La Société des Amis du Musée du Louvre*.) The 1901 Act explains that an association is "a convention consisting of two or more individual persons who permanently put in common knowledge or activity, with another aim than sharing profits".

The creation of an association must be declared at the "préfecture", a local authority. Today, the number of declared associations is unknown; 600 000 to 700 000 is an estimation. Declared associations are created also by legal persons, by firms that want to enter into partnership with another firm, for monument maintenance. For instance, the association for sponsorship of Evry (a middle-sized town near Paris) comprises many medium-sized firms. The actions are multiple: young artists' exhibitions, etc.

Declared associations have a limited legal capacity: for instance, they cannot own real estate or receive legacies, this limited capacity goes back to the beginning of the 20th century. On the other hand, the State and declared associations benefit from tax-exemption: from taxes on income and profits, but from VAT too (only for the first six sales a year). Gifts to declared associations are deductible up to 3 % of taxable income and up to 2/1000 of the enterprise turnover.

Public utility associations have to be approved as such by the *Conseil d'Etat*, at the end of a two year procedure. Most of them are health or welfare charities. Public utility associations have a full legal capacity: they can own real estate and financial assets. Gifts to public utility associations are deductible up to 5 % of taxable income and legacies are encouraged by inheritance tax exemption.

Foundations enjoy the same tax privileges as public utility associations. They also have a full legal capacity and they own real estate and financial assets. There are few private foundations in France, only 428 in 1990. Since the law of 23 July 1987 on sponsorship development, the term foundation is protected; only an organisation which is approved by the legal authority of the Prime Minister and the *Conseil d'Etat* can be created. The reason why there are few private foundations in France is that they must have a large capital: 5 million francs. These foundations have, contrary to associations, a broad legal capacity: they can do all the civil acts, they can own houses or buildings (for instance a castle which they manage).

These foundations are managed by a council whose members are the founders, qualified persons in the arts and representatives of legal authority.

A special characteristic of foundations is that a private person has a large control of legal authority (control of the account, of the foundation activities, of the endowment and, by the council, of all the acts arranged by the foundation). As you can read in the newspaper, some foundations have financial problems; the government has organised a great debate about the functioning of this legal form. I think a new law might be passed next year.

I want now to explain the activities of a new particular foundation called "*Fondation du Patrimoine*". This foundation has been created by law. Its capital of 30 million francs comes from the gifts of ten important firms. Its activities will be based on the conservation and preservation of national monuments as are the activities of National Heritage in Great Britain. The foundation can protect and contribute to the renovation of monuments (castles, pictures, etc.). Its council is composed of representatives of the firms which are the founders, qualified personalities, and also mayors of large towns. This foundation can accept gifts and endowments from other firms and even from particulars.

This presentation would be incomplete without mention of another form called foundation. It is an account which someone can open in a large foundation. The large foundations and authorized foundations can act as a shelter for particulars or firms. The legal mechanism is the same as the trust: someone may invest money for sponsorship actions. But it is the foundation which realizes these actions. The most well-known of these typical foundations is the "*Fondation de France*" or the "*Institut de France*". The "*Fondation de France*" was created 25 years ago and shelters today about 100 foundation accounts.

To encourage sponsorship, the French government and the legislator created new legal forms, situated between the association and the foundation which we have considered.

This new form is called the "firm foundation". This firm foundation can only be created by firms and aims at sponsorship. Firm foundations are created for five years or longer. Firm foundations have the same limited legal capacity as associations. For instance, firm foundations cannot receive legacies or gifts. The firm grants money to the foundation: at the creation, the firm must pay about one million francs for five years.

A council composed by the founders manages the firm foundation. And firm foundations are created also by legal authority of *le préfet*. Today, there are about 50 firm foundations: for instance *La Poste* has created a firm foundation in sponsorship of songs and theater.



HUGBERT FLITNER

Organizational Forms for Private Sponsorship in Germany and Presentation of the Alfred Toepfer Stiftung F.V.S.

Under the legal system of the Federal Republic of Germany there are essentially *three types of organisation* available for private sector activity and sponsorship in the area of monument preservation:

1. The association (*Verein*)
2. The limited company (*GmbH*)
3. The foundation under civil law (*Stiftung*)

The association is the most common organisational form for all forms of activity within the private sector. There are over 240,000 associations in Germany.

By contrast, the corresponding Directory of the Federal Association of German Foundations 1994 only lists around 5600 foundations. There are no statistics about charitable limited companies. The number of limited companies is about 610,000 in total.

These forms of organisation have the following *differing characteristics*:

The association has members, of whom there must be at least seven when it is set up, but of whom there are usually more. Its distinguishing features are the uncomplicated way