

Kurt Siehr*

Frank Fechner, *Rechtlicher Schutz archäologischen Kulturguts. Regelungen im innerstaatlichen Recht, im Europa- und Völkerrecht sowie Möglichkeiten zu ihrer Verbesserung* [Legal Protection of Archaeological Cultural Property. Regulations in Domestic Law, in European and Public International Law as well as Possibilities for their Improvement], (Berlin: Dunker & Humblot 1991.) 23.5x15.5cm ISBN 3-428-07234-X. Paperback DM 48.00 (Tübinger Schriften zum internationalen und europäischen Recht [Tübingen Studies on International and European Law], vol. 25).

The doctorate thesis submitted to and accepted by the University of Tübingen (Germany) is mainly devoted to German law on the protection of archaeological and cultural property (pp. 21 – 78). According to the German constitution the federation has very limited powers to protect cultural property insofar the principal jurisdiction lies with the German Länder. The author concentrates on the Monuments Act of Baden-Württemberg which to a large extent is one of the best German statutes of this kind. Federal law

supplements this regional legislation by statutes on criminal law, building law, private law (discovery of treasures), private international law and by constitutional guarantees of property and of freedom of research. Summarizing the German legal situation the author deplors that federal statutes (especially the Criminal Code) and also the various local monuments acts do not sufficiently protect archaeological cultural property. Therefore he turns to European and international law on the preservation of archaeological treasures.

European law still exempts national treasures from the freedom of movement of goods (Article 36, Treaty of Rome). Whether the drafts of January 20, 1992 for a regulation and for a directive supplementing Article 36, Treaty of Rome (Official Journal EC of 28 February 1992, No. C 53/8 and 11) will improve the supranational situation has still to be seen.

The chapter on public international law is divided into two parts dealing with the protection of cultural property in times of war and of peace. Various international conventions are treated in short outlines. On this level international cooperation has to be improved in order to prevent

* Professor of Law, Zürich University.

the destruction of archaeological sites and treasures. Finally the author proposes some measures to improve the present situation. He advocates the introduction of import restrictions similar to those applied under the Washington Convention of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora (pp. 114–124) or under the American ‘Pre-Columbian Monuments Act’.

The thesis is well written and relies mainly on statutory material and literature. The author neglects German case law, especially the case of Greek coins which were exported by the Greek finder of the treasure and for the return of which the Greek Republic sued successfully in Germany.¹ If the author had mentioned this case and also the Italian Danusso case,² he would have developed further an idea not dealt with in this thesis. Archaeological objects, especially in international relations, can be effectively protected and claimed back if they are by law state property as, e.g., in Greece and Ecuador. Also in other respects the author was not careful enough. From Brussels he could have got the infor-

mation that since 1989 some measures were discussed which finally led to the draft regulation and draft directive mentioned above. He also should have known that there are already four Member States of the EC (Italy since 1978, Greece since 1981, Portugal since 1985 and Spain since 1986) which have ratified the UNESCO Convention of 14 November 1970 concerning measures to be taken to prohibit and prevent the illicit import, export and transfer of ownership of cultural property (p. 96). Also the sanction of forfeiture of goods illegally exported is no Spanish speciality (p. 107). It is well known in other countries. All these inaccuracies could have been easily avoided by a more penetrating and internationally broader research.

Notes

- 1 Schleswig-Holsteinisches Oberlandesgericht 10 February 1989, *Neue Juristische Wochenschrift* 1989, p. 3105.
- 2 Tribunale di Torino 25 March 1982, *Rivista di diritto internazionale privato e processuale* 1983, p. 625.