VDP. DIE PRÄDIKATSWEINGÜTER

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"Whoever goes out must also come in again".

Lecture on the occasion of the VDP's viticultural policy matinee at the Electoral Palace in Mainz on July 4, 2021.

Although it may not be entirely appropriate to the seriousness of the situation, I do not want to conceal the fact that I received the news of the withdrawal of some cooperative associations from the German Winegrowers' Association (DWV) with a certain amusement. The news immediately brought back to me, as a long-time participant observer, memories of another withdrawal from the German Winegrowers' Association, that of the VDP some 25 years ago. Then, as now, the core issue was one that, since the 1969/1971 wine law at least, has polarized the professional world like few others: Großlagen. It is not possible to discuss the details associated with this term here, because the subject is so complex that one could hold an entire wine law seminar on it. Only a general hint is allowed at this point: As an interface between the producer in the broad sense and the consumer, wine designation law has always been the field in which high stakes have been played since the first wine law of 1893.

I would like to document this in the following by means of some examples.

- Original bottling

- Natural wine

- Large vineyard

- Wine law as a seismograph

- Late Harvest

- "Meadow judgment

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I.

From a historical point of view, the question of what wine is at all, i.e. what can be marketed as wine at all, under which conditions and under which designations, is quite recent. A legal definition exists only since 1901. "... by alcoholic fermentation from the juice of the grape". This definition had drastic consequences. For all of a sudden, all those who had been capricious about the production of so-called "artificial" or "analysis-proof wines", i.e. alcoholic beverages that passed as wine as long as they exceeded certain minimum extract values, were out of the game. What remained in theory was the so-called "real" wine trade. However, the interests of this trade did not coincide with those of some producers, namely those who produced the so-called "natural wines" and put them on the market by auction. Since 1897, these producers had formed associations in various regions in order to counter the growing market power of the trade. In concrete terms, however, the political dispute at the end of the Empire did not revolve around the term "natural wine," as one might suspect, but around "original bottling." In a time of rampant wine counterfeiting and false designations of origin, the so-called natural wine auctioneers had gained a reputational edge. They had stipulated that their wines could only be called original bottlings if they had been bottled in the producer's cellar and the bottles had been sealed with the producer's cork. Only then, according to the quality promise, were they "forgery-proof". The representatives of the wine trade, however, wanted to profit from this capital of trust. They, too, wanted to be allowed to call natural wines original bottlings if they had been bottled - with the producers' permission - in their cellars. However, the 1909 wine law did not comply with this demand. In 1910, four regional associations of natural wine auctioneers joined together to form the VDNV, among others, because they wanted to join forces and continue to reserve the term original bottling for themselves. Not that the representatives of the Moselle, the Rhine Palatinate, Rheinhessen and the Rheingau were necessarily sympathetic to each other. On the contrary. After a series of disastrous harvests and sharp drops in exports, they were fiercer competitors than ever. It was their common interests that brought them together at the same table in Koblenz in 1910.

In fact, the natural wine auctioneers, as the producers of the acknowledged "best white wines of the world," were able to maintain their position of political dominance, which was not market-dominant, but nevertheless far-reaching, until long after the Second World War. It was not until the wine law of 1971 that a turning point occurred that still has an impact today. This time, however, it was no longer a question of original bottling, but of natural wine.

II.

The term "natural wine" was expressly forbidden. This ban was not trivial; after all, many of the later members of the VDNV had established the world reputation of the Hocks and Moselles with their so-called natural wines in the 19th century. When it became apparent in the 1960s that the term might be banned, the natural wine auctioneers even asserted an encroachment on fundamental rights positions - without success. Because what "nature" wine is, was and is just as little self-explanatory as "orange" or in the area of food law the designation "bio". And wasn't every must treated with various chemicals during fermentation and aging to prevent the wine from becoming what its "nature" is, namely vinegar? All of this could have been argued about, from deacidification to microbiological stabilization, cold sterile bottling, pasteurization, and carbonated bottling. But the natural wine auctioneers had lost their power of definition, so that in the negotiation processes within DWV they were subject to the cooperatives and representatives of the wine trade. How had this come about? The truth is that many natural wine auctioneers had lost faith in their wines after many bad wine years in the post-war decades and an explosion in management costs. They were encouraged in this by viticultural consultants who, faced with steep and terraced sites, spoke of "old, unremunerative viticulture." In some vintages, the worst musts were even already "improved", more and more wineries and also cooperatives resigned from the VDNV. Moreover, the natural wine auctioneers worked against what had been called the spirit of the times already in the 19th century. If they had been interested in reserving predicates such as Spät- and Auslese for wines with a high initial must weight in the wine law of 1930, it was not least because, as a rule, they and they alone had vineyards in which the grapes became fully ripe in ordinary years. After World War II, these "natural" wines accounted for an even smaller share of wine production in Germany than they already did. In the Federal Republic, however, it was no longer the natural wine auctioneers who set the tone in the German Winegrowers' Association, but cooperatives and the large wineries. They could certainly not be interested in the privileged treatment of natural wines by the wine law. Was the mass of German wines to be forever stigmatized as "non-natural"? And this at a time when dry or wet "improved" wines met the taste of the public far better than many a must that had been "naturally" developed with small amounts of natural sugar and exorbitantly high acidity? The prohibition of the term "natural wine" by the wine law of 1969/71 was therefore not only justifiable from the point of view of the matter. It was also a consequence of the shift in the balance of power within German viticulture and - this, too, must be borne in mind - the assertion of a new social model in the field of viticulture: it was no longer the origin, often based on privileges and old ownership relationships, that was to be the yardstick for judging a wine, but the "quality in the glass" to be determined according to objective criteria.

III.

The wine law of 1969/1971 with its prohibition of the prefix "nature", which is also based on European law, is thus an authentic mirror of its time - which also applies to the introduction of "areas" and "Großlagen". Both terms had factual antecedents in the wine laws of 1909 and 1930; in the case of Großlage, these were the provisions "nearby," "adjacent," "similar," and "equivalent."

However, these formulations offered so much leeway that time and again the courts had to clarify which wines were allowed to be marketed under the best-sounding "Gattungs-Ortsenname" and "Gattungs-Lagenname". You may spare me the details. In order to put an end to these disputes, the 1960s offered the possibility of forming Großlagen (large vineyards) from "nearby" vineyards, whose catchment area was indisputable by defining the individual vineyards that fell under it.

A second fly was believed to be killed with only one stone. In important exporting countries such as the United Kingdom and the United States, the German wine designation law had always been criticized as a book with seven seals. Large vineyards now offered the possibility of bringing large quantities to market in a recognizable way - if one did not want to resort to brand names. But the intentions of the legislators and the forces behind them are one thing, effects another. By leaving the definition of major sites and their naming to regional, even local bodies, one gave the power of definition to those who also had the most power in real terms, on the market.

An example: In Nierstein, the largest winegrowing community in Rheinhessen, a handful of export-oriented wineries dominated the scene. What could be more obvious than to take the names of the best-known and best individual vineyards and designate them as large vineyards in order to increase export volumes (Auflangen, Rehbach)? Whoever thinks evil of this is naughty. Strategies of this kind were sorely needed. For years, the German wine market had been unable to absorb the quantities that resulted from land consolidation and the replanting of high-performance clones. It was exports that initially proved to be a highly profitable and, in view of a stagnating domestic market, highly necessary pressure relief valve for the wineries. However, this business model was lost in the 1980s, when a combination of wine scandals and huge harvests caused the market to largely collapse both at home and abroad. In Austria, the development was similar for a long time. However, the paths have diverged since the eighties. While Austrian wine is rushing from record to record in the domestic market as well as in exports, the clocks in German viticulture are running backwards again in most market segments. Perhaps in this respect it would be worthwhile to evaluate the actions of the ÖWM in comparison with those of the German Wine Fund and the German Wine Institute. My amateurish hypothesis in this context is that Austria has been focusing on profiling its top wines and sending clear, easily decipherable messages to consumers since the mid-1990s at the latest. For this, however, it needed the scandal of 1985, which swept numerous players from the market who had a great deal of veto power because they had been economically successful in relying on mass instead of class.

In Germany, however, cooperative associations are leaving the German Winegrowers' Association in 2021 because their veto power is no longer great enough to prevent them from practicing the organized consumer deception called Großlage unhindered. That gives hope!

IV.

What is meant by all this? It is constitutive for the wine market that the interests of the different groups of "distributors" of wine are not only not always congruent, but sometimes diametrically opposed to each other. This makes wine law one of the most exciting subjects of historiographical research - if one were to pursue it.

For the time being, a few glances into history must suffice to show that wine law is something like a seismograph, albeit a very complex one. Wine law not only reflects power relations on the side of production and distribution. At the same time, it reflects dynamics on the side of the natural conditions of viticulture and also the change of the zeitgeist on the side of the consumers. If we also look at the field of politics, a remarkable dynamic can be observed here as well. By this I do not only mean processes such as the Europeanization of wine law, which has now lasted for more than 50 years, but also the goals that the legislator wants to pursue or must pursue by way of legislation and the relevant regulations.

Probably the most recognized jurist in the field of wine law to this day, the (last) director of the Alzey District Court Hans-Jörg Koch, formulated this constellation as follows in 1958: "The wine law is an economic law. It contains elements of criminal law, competition law, and those of a purely economic nature with the aim of preserving the winegrowing industry for sociological, cultural, as well as nutritional and labor policy reasons through measures to promote sales and protect German wine from competition from foreign products." (The Wine Law. Commentary, p. 15) (No longer a sanitary function as in the Middle Ages).

But it is easy to show that politics often came into play in these processes, which were shaped by various interests and power structures, at a rather late stage and in a rather moderating way and without an agenda of its own. In the imperial period and the Weimar Republic, pre-parliamentary bodies such as wine parliaments and advisory councils served as forums where representatives of different groups of stakeholders met again and again, and by no means without conflict. In the post-war period, it was various working groups within DWV that set the course for new legislation. And the history of the most recent wine law will one day also have to be described as a complex negotiation process. There was only one phase in German history that was less complex, because it was more undemocratic. During the National Socialist era, the Reichsnährstand issued many regulations by decree. Their aim was, outwardly, above all to prevent a "winegrowers' emergency" as in the years before the First World War and the second half of the 1920s up to and including 1933. Above all, the expansion of vineyards in climatically unfavorable flat areas was to be avoided. On the one hand, this was to benefit the "freedom of food", which was important for the war, but on the other hand it was to put a stop to the production of wines that tended to be of inferior quality and possibly unsaleable.

It cannot be reminded often enough that most of the provisions of the Reichsnährstand in combination with the wine law of 1930 remained in force well into the time of the Federal Republic. These include not only the reservation of approval for the planting of vineyards. It also includes the definition of a range of vines and the provision that vineyards should not be planted in mixed sets. Today, the opinion can be heard here and there that the Nazis had thus transferred their racial-biological purity ideas to viticulture. Stupidly, almost all of the Nazis' viticultural policy initiatives had been conceived by the viticultural experts of the Weimar Republic, but had not made it into the wine law of 1930. If the Nazis limited viticulture to a few quality grape varieties, it was simply because there was only sufficient "recognized", i.e. yield-safe and disease-free grafting material available from a few varieties. Without this, however, the conversion to grafted vine cultivation could not be accomplished.

If, however, the vineyards could be raised with "efficient" material, then the necessity of planting several grape varieties in such a way that one brought the acidity, the other the quantity and the third the bouquet, so that in most years one had a reasonably drinkable wine, would become unnecessary. For regulations like this one had at that time a clear term: "modern viticulture".

V.

While these provisions lasted for a long time, other elements of the wine law of the 1930s and 1940s already showed strong signs of dissolution in the 1950s. Many provisions of designation law, such as Spätlese, had already fallen into disrepute in the early postwar period due to "inadequate enforcement" of the wine law and the associated "moral low of many legal comrades" (according to Koch in his 1958 commentary, p. 21).

Koch was alluding to the fact that "much abuse" had been made of the term Spätlese. (p. 71f.) In theory, a Spätlese required "fully ripe" grapes - which would also have resulted in a higher alcohol content than "normal wines". The wine law, however, did not provide for a minimum alcohol content, which is why it

depended on a sensory tasting whether the "objected" (!) wine had the "character of a Spätlese" ... You can guess the rest. The binding of predicates to the must weight as an "objective" standard and the passing of a quality wine test were only the logical consequence, welcomed by all (!) experts in the sixties. But when politics left the determination of the respective minimum must weights to the regional winegrowing organizations, the door was opened to other forms of "moral low". The regional "self-governments" left no stone unturned to create maximum competitive advantages for themselves by setting the minimum must weights as low as possible.

For me, this story holds an important lesson:

For a long time, it was not least the strategy of the ministerial administrations (especially at the state level) and the legislature to leave highly sensitive weighing processes to the "power play" within the professional organizations, which leads to conflicts such as the one about the Großlage or also about the Großes Gewächs. On the other hand, history should teach - at least in my eyes - that wine law must be about making every form of free-riding more difficult, if not completely eliminating it. By this, I mean that no incentives may be set that favor free-rider effects at the expense of (1) clarity and (2) truth, but also of (3) quality.

The will to put a stop to such tendencies has fortunately been demonstrated by the recent change in designation law. However, in my opinion, it could be even greater in all parties.

VI.

In fairness, however, it must be admitted that politics is not always the sole master of the proceedings. From time to time, courts also came into play. The most momentous of these was probably the 1957 "Wiesenurteil" (meadow ruling) of the Federal Court of Justice, which effectively invalidated most of the cultivation restrictions that had been in place since the mid-1930s. The Winegrowing Act, which was subsequently enacted in 1961, was no longer able to prevent the expansion of vineyards, despite all declarations to the contrary, especially in the high-yielding flat areas. This development presented viticultural policy with an almost insoluble dilemma. On the one hand, demand for wine in Germany had already failed to keep pace with the increase in production in the second half of the 1950s. Per capita consumption of beer had exploded, while that of wine had increased only slightly. The area under vines, however, had increased since the end of the war, as had area productivity. Panic spread in the winegrowing industry. This was because all experts expected that the establishment of a common market organization for wine by the Council of the European Economic Community (EEC), which had been planned since 1962, would mean that German producers could no longer be protected from foreign competition by import restrictions. So authoritative wine officials, in cooperation primarily with state politicians in Rhineland-Palatinate, visibly shifted to (1) measures to promote sales and (2) intervention schemes to remove surplus quantities from the market. To this end, a "stabilization fund for wine" was set up in 1961 in the legal form of an institution under public law, fed by the levies of wine producers. This story, too, should be researched (which it is not) and told. Whether the consistently positive memories of the still living actors would then remain unclouded, would still have to be proven.

For today it should be however immediately enough with my explanations.

VII.

What I wanted to tell is the story of wine law as an immensely dynamic field of law. This is largely due to the fact that wine law has to take into account so many different objectives than hardly any other law. Accordingly, the dissatisfaction of numerous actors is great, who can always imagine different and for them better conditions from their own perspective. One should imagine the wine law as a three-dimensional, by no means symmetrical body with a variable number of corner points and connecting lines of different lengths. Thus, however, almost every displacement of a corner point automatically causes a change in the coordinates of the others and a shortening or lengthening of the lines between the individual points.

From this point of view, every fight is worthwhile, even that of the small David VDP against the mass Goliaths of the German wine world. For those who are not at the table will probably have a hard time having their say. But this is worthwhile, as a look back shows. The development of wine law from its beginnings to the present day presents itself to me, all in all, as a success story, especially from the consumer's point of view. Wine is still a natural product, and even more so one that, thanks to a high level of regulation at all levels - from simple table wine to globally sought-after rarities - is now subject to higher quality requirements than ever before.

There are also strict limits to the ever-present temptation to enrich oneself by deceiving consumers and by fraud of all kinds in the wine market. At the same time, the lines of what is prohibited and what is permitted are not rigid but fluid. Extensive experimental regulations, for example, ensure that innovations in cellar technology and new wine treatment methods are not excluded per se. So, in the midst of the current excitement, I would like to conclude with a sentence that has gone down in the history of German parliamentarianism through the SPD politician Herbert Wehner, but which can claim validity for many life situations: "He who goes out must also come in again." (March 13, 1975)

The VDP has long since rejoined DWV, and many another who has left or will leave will willy-nilly come back. (Incidentally, in some reports Wehner ended his angry shout in the direction of the CDU/CSU parliamentary group with the sentence: "I say cheers to you").