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Knowledge and protection of the modern and contemporary architectural heritage: comparative experiences

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Juridical Aspects Protecting the Modern/Contemporary, and Copyright

Introduction (the relationship between law and culture; the «need for law»; the need not to confuse the juridical notion of «cultural asset» with the historical/social or anthropological notion of «culture»)

I think it is useful in the first place to clarify that the juridical protection of cultural assets (juridical protection in the sense of public function of protecting the cultural heritage, and therefore not of protection in the material sense, such as actions and practices aimed at conserving and protecting the asset) aims – in line, moreover, with the function of social integration that belongs to law in general – to prevent and resolve conflicts among parties that make positive or negative claims, while raising subjective rights and legitimate interests, to exercise powers and to make (or not make) given uses of an asset (tangible, that is a separate portion of material, like a book; or intangible, like the right to vote at a company's shareholders' meeting or to be accorded the moral and property right of author or inventor). As a rule, it is a matter of using and exploiting (and disposing of) the asset – a use and exploitation that, in law, tend to be 'exclusive' (modern private law in liberal states arises from the destruction of economic systems based on community sharing of the use of common assets; although there is much debate today over the return to an economy and to a law that relaunch and valorize different ways of possessing [Mattei, Reviglio *et al.* 2007; Maddalena 2011; Chirulli 2012; Mattei 2012; Capra, Mattei 2017; Tonoletti 2019], there is no doubt that, at present, law still hinges on private ownership, understood almost as an emanation of the sphere of sovereignty of individual freedom). Today, then,the juridical protection of the cultural asset is still and above all a position of a restriction of the public-law (authoritative) type upon the freedom of the private owner (possessor or holder) of the asset. Thus (public/administrative) law on cultural assets came into being throughout Europe, and not only in Italy.

Cultural assets law protects these assets, asserting restrictions on use and exploitation by the private owner, in defence of the general interest of society at large.

It is essentially a struggle of the general interest (in asserting the intrinsically 'public' quality of the cultural value borne and expressed by the asset) 'against' the private ownership by the single individual (which tends to appropriate it exclusively and, wholly understandably, in the desire to draw from it the maximum benefit or the greatest personal profit possible).

It is a struggle made of constraints, of restrictions, of submission to preventive authorization checks, of imposed conservative measures, of pre-emptions, of expropriations, and so on.

The law can also act by recognizing quality, attributing status, and incentivizing good practices, and not just through restrictions and prohibitions. Although there is also a public-law regulation of State aid, public contributions, subsidies and grants, facilitated tax regimes, tax credits (the "Art bonus", for example), tax deductions, and so on, aimed at promoting and incentivizing the proper conservation and management of the cultural heritage, it is no accident that this type of public intervention lies outside the sectoral Code and is regulated under special laws.

Then there is a law in some way protecting the authenticity of an asset (from collective or guarantee or quality certification marks pursuant to Legislative Decree no. 15 of 2019, to patenting, from registered designations of origin for food and wine to EC safety marks for the importing and circulation of consumer products, and the recent problem related to the recognition of a mark of European cultural heritage, etc.). This is the type of juridical discipline that comes to mind when speaking (more or less aptly) of 'protecting' the so-called intangible cultural heritage (e.g. the alberello vines of Pantelleria, and Sardinian *cantu a tenore*), as well as cultural traditions, habits and customs; but this parallelism is a risky one, and unconvincing for the jurist, because it comingles juridical instruments and institutions that are absolutely different. We must be careful to distinguish between and not to confuse,

from the jurist's perspective, the law that 'removes', that 'restricts', that 'decides', that orders and imposes, or prohibits, from the law that gives, that attributes, that grants, that 'rewards'.

To be sure, the final purpose, the highly general aim, can obviously be the same: 'protecting' and 'promoting' culture (and therefore cultural assets as well), in the teleological synthesis of the two paragraphs of Article 9 of the Italian Constitution (promoting culture and safeguarding cultural heritage). But although this statement is true and has a meaning on the cultural level in general, it is false and meaningless on the juridical level proper, because it mixes wholly heterogeneous juridical instruments.

The law on the protection of cultural assets, that of the 2004 Code (formerly that of the "Bottai" Laws of 1939), is linked to a legal, material and typical notion of cultural asset, for the simple reason that it is waging a war against private property in order to defend the value (intangible, of course) that the cultural asset has for society at large, as a super-individual, general public interest[1].

The entire history of this law on the protection of cultural assets arises and develops as a reaction to a concrete, current threat to the conservation of the heritage: from the fideicommissum, which prohibited the dismembering of noble collections and their sale abroad, to Law no. 411 of 1905 on the protection of the Ravenna pinewood, and the "Galasso" Law of 1985. The «need for protection» is the original spring and the precondition for introducing new protection regulations.

There is much talk, especially in the European Union's documents (many sociology-related ones, and a few juridical), of integrated protection of the cultural heritage, and there is the tendency to mistake cultural heritage in the juridical sense for culture in the anthropological one, thereby generating much confusion, a sort of Hegelian night in which all cows are black (that which marks the negation of juridical protection, that lives by distinctions, decisions, clear and distinct concepts). This ideology explains the existence of those that, against all logic, have chosen to translate the «cultural heritage» of the Faro Convention – which is a people's culture in the anthropological sense (including cultural activities) – into Italian with the term «patrimonio culturale»[2] (instead of, in my opinion, the far more appropriate term of «eredità culturale» which refers aptly to cultural inheritance). Their idea is that by blending everything in this all-inclusive and bungled concept of «cultural heritage» borrowed from the Faro Convention, we can, as if by Trojan Horse, bring intangible assets, popular habits and customs (ideologically conceived as a sort of 'discriminated minority') into the fortified (noble) citadel of the 2004 Code – an operation with no juridical meaning whatsoever, bringing only confusion with it.

To be sure, the two paragraphs of art. 9 of the Italian Constitution are to be read together because they are closely correlated, but they must not be fused and confused in a single text: they are, significantly and not by accident (nonetheless) distinct. And they are distinct because the means of implementation – which is to say the types of juridical instruments put in place by the legal system in order to implement one paragraph and the other – are radically different: freedom and promotional instruments for culture and cultural activities; conservative instruments for the protection of the cultural heritage.
The two paragraphs – culture and cultural heritage (including the landscape) – share a purpose in 'synthesis', because they represent, so to speak, the Hegelian dialectic of Thought and History, of Subject and Object (the cultural creativity that is made an object and turns into history, thereby becoming cultural heritage), but are distinct in 'analysis', which is to say in the ways through which the final synthesis is carried out and realized.

Before discussing 'protection' of contemporary architecture, it is necessary, then, to fully clarify the ideas for which the «need for protection» is claimed and advanced. One thing, in fact, is the 'protection' – understood in the metajuridical sense – of contemporary architecture, which is realized through the promotion and support of the quality of architecture[3]; the promotion and support of studies and of scientific research in this field; the collection and study of the archives of architects and of studies of contemporary architecture; and the promotion of conferences and publications on the matter ('protection' in the metajuridical sense that can also be implemented through juridical instruments, such as the discipline and management of design competitions, the introduction of urban planning measures aimed at promoting contemporary architecture, the adoption of appropriate research and study programmes, the distribution of subsidies and incentives, etc., but has nothing to do with constraints, with the confrontation/clash with private ownership, which is the essence of the Code's protection discipline).

A wholly different thing is the need, which we will discuss below, to extend and strengthen the juridical protection proper of contemporary architecture with the protection instruments typical of the Code relevant to the sector, which is to say through constraints, expropriation, pre-emption, and imposed conservation obligations, subjecting any modification that is to be made to the asset to the Authority's prior authorization check, etc.

The Italian juridical tradition in the protection of cultural assets and the dual prerequisite of the work's age threshold and of the creator's not being alive. The gradual shifting of the 'historicization' threshold from fifty to seventy years

The Italian juridical tradition – since Law no. 185 of 12 June 1902, *with provisions on the protection of monuments and objects having the value of art or antiquity* ("Nasi" Law), art. 1, second paragraph (Excluded are buildings and art objects by living creators, or whose execution does not date to more than fifty years ago), and applied in law no. 364 of 20 June 1909 ("Rosadi" Law) – has always placed a limit upon the applicability of protection regulations, consisting of the minimum historicization threshold of the art object, and of the creator's not being alive.

The reasoning for this prerequisite is to be sought in the need to ensure a minimum stabilization of the social judgment of the work (which tends to consolidate with reference to the previous generation's artistic output) and in the need to keep the protection measure from possibly interfering with the art market, thus favouring living creators.
The term 'generation' is to be understood here not as the interval of time usually associated with the birth of a new generation (about twenty-five years, on average), but as the interval of time on average needed for the generation to which the work's creator belongs to 'disappear' (this notion is obtained out of consistency with the other prerequisite – the creator's not being alive). In this case, then, it bears clarifying that a cultural notion of 'generation', and not a strictly biological notion, is being used. This arrangement was not questioned in the development of the notion of the «cultural asset» which, during the second post-War period, transitioned from an idealistic and prevailingly aesthetic vision, in the matter of Croce, to a historic/social and anthropological vision (the notion of «testimonianza materiale avente valore di civiltà» – material testimony having the value of civilization – of the Franceschini Commission instituted with Law no. 310 of 1964). Clearly, the historical/social notion incorporates within it the idea that the «cultural asset» bears 'historic' witness to civilization.

A parallel with copyright has been hypothesized (then, at least at the time of the subsequent Law no. 1089 of 1939, copyright also lasted fifty years after the author's death). But the two terms appear clearly out of sync: fifty years after the making of the work in one case, and fifty years after the creator's death in the other. The reasoning actually lies in the reference to the average duration of a generation: the art object may merit protection only if it does not belong to more recent generations, but at least to that whose members no longer (on average) exist.

Recent reforms have raised the threshold of historicization to seventy years. First, in 2011, only for the properties of public bodies (Decree-law no. 70 of 13 May 2011, converted with modifications by Law no. 106 of 12 July 2011), then (2017) for all cultural assets generally, movable and immovable, public and private (art. 1, paragraph 175, letter a, no. 2 of Law no. 124 of 04 August 2017)[4].

There is room for debate over whether this arrangement is currently appropriate and whether it can be agreed to (there are European countries, like Great Britain and France for example, that do not recognize these historicization thresholds, but present a protection legislation quite different from Italy's, while EU law provides for different minimum age thresholds for the applicability of certain protection measures provided for in it, for example in the matter of restitution of stolen or unlawfully exported goods; the Unesco Convention concerning the Protection of the World Cultural and Natural Heritage, done in Paris on 23 November 1972, does not set any age threshold, but makes frequent reference to large sites, for which such a requirement would be difficult to apply)[5].

But this arrangement doubtlessly presents its own clear and well-defined *raison d'être*. Can it be overcome? Does it make sense – and is it at all useful – to extend the protection of the 2004 Code to contemporary art and architecture? It is necessary here to draw a clear distinction between movable and immovable assets. For the former, it is questionable that contemporary art, artworks consisting of movable things or site-specific installations, performing arts, etc., might require or permit protection measures of the type provided for by the 2004 Code. The 'protection' the (movable) works of contemporary art require is certainly of a type quite different from that put in place by the 2004 Code. Contemporary art lives by international circulation and does not suffer the limitations typical of the protection of the cultural asset in a traditional sense. We might discuss the need to lower the age threshold in certain cases, but it seems clear to me that there is no urgency in the area of contemporary art.

The problem arises, however, and is urgent, in terms of immovable assets, notably for contemporary architecture, for which the «need for protection» is presented as more urgent, in the face of an arsenal of currently available instruments that, as we shall see, appears weak and insufficient (in the matter, see Monti 2019, especially paragraph 3, and the references there).

The limits of applicability of the historic constraint of the 'relational-external' type, pursuant to letter d of paragraph 3 art. 10 of the 2004 Code

The possibility has in many cases been raised of submitting works of contemporary architecture for protection, even if they lack the aforementioned prerequisites, through reliance on art. 10, paragraph 3, letter d of the 2004 Code. This type of cultural asset, which presents, as is it were, an especially historical and 'relational-external' (and not intrinsic) interest, for its reference with the history of politics, the military, literature, art, science, etc., does not in fact require the artist to be dead, or for the work to be more than seventy years old. But this possibility encounters clear limits and presents considerable difficulties. In the first place, it raises the risk of excessive power for «false cause», which is the reason for cancelling the act; this takes place in the case in which the administration uses a juridical instrument to pursue the purposes of protection typical of another juridical instrument (and it is this that might take place when, to avoid the problem consisting of the fact that the property is not yet seventy years of age, the 'relational-external' or historic system should be used, as per the aforementioned letter d of art. 10 of the Code, in place of the direct one for the particularly important cultural interest intrinsic to the property to be protected, providing justification upon the finding that it at any rate bears witness to a certain cultural 'current' or school of architecture).

Recently, moreover, case law has provided a reductive, event-based reading of the reference to history needed to activate 'historical-relational' protection. In the known case of Cinema America in Rome, the Council of State (Cons. Stato, sect. VI, 14 June 2017, no. 2920), repealing the favourable lower-court decision made by the Administrative Regional Court (TAR) of Lazio (Tar del Lazio, sect. II-*quater*, 15 September 2015, no. 2250/15), stated that the principle by which, for the purposes of the legitimate placement of a 'relational-external' constraint, a specific and not generic reference with history is needed; even the memory of events of local history can be sufficient, such as in fact the valorization of a previously troubled neighbourhood, or the memory of minor history, referred to by the maps of a stretch of countryside, but provided that these are specific facts, well identified as such (which was to be lacking in the Cinema America case, in which the appealed measure went no further than generic reference to the fact that during the 1950s and 1960s, the era when the structure was built, Rome was seeing a full-blown expansion of its film industry: Cinecittà became the world's number-two cinema capital, preceded only by Hollywood – Rome had more than 250 theatres –, with the consequent lack of the necessary reference to a specific historical event, whatever its importance in the general history of the city and of our country[6]).

Art. 20 of the copyright protection Law no. 633 of 1941

The question has been raised on a number of occasions whether the heirs' claim to be able to demand recognition of the particular artistic character of an architectural work is admissible, which is to say whether the heirs have a subjective position of legitimization to initiate and conclude the proceeding provided for under art. 20 of Law no. 633 of 1941 for the protection of copyright, aimed at the recognition of the particular artistic character of architectural work designed by the legal predecessor[7].

The aforementioned legal provision distinguishes two types of author's moral right – that is to say the right to the authorship of the work, and the right to the integrity of the work. Case law (Cons. Stato, sect. IV, no. 4532 of 2000; sect. VI, 26 July 2000, no. 4122; sect. VI, 15 April 2008, no. 1749) has clarified that only the right to the authorship of the work may be claimed by the heirs because it does not require personal exercise by the author while, to the contrary, the right to the integrity of the work, which involves a participatory interest of the author in the work of studying or modifying the work, can be exercised exclusively by its holder, as only he or she is able to assess the new works' compatibility with the original artistic design, coordinating them, where applicable, with the latter (with the additional acceptable specification according to which such a principle is also of relevance for those cases in which the heirs had adequate professional and artistic capacities.

In effect, the heirs would be unable to express themselves as to the changes, since these latter constitute an expression of the author's personality). It follows that the application for recognition of the particular artistic value may be made by the heirs, if and to the extent that they are or might be owners (or at any rate qualified holders or possessors) of the property, for the sole purpose of earning the interest subsidy (provided for by art. 37, paragraph 4 of the Code of the cultural and landscape heritage), but not also for the purpose of the reservation of the study and implementation of modifications, since the right to apply for recognition of the important artistic character of the work cannot be transmitted to the heirs if this is aimed at the study and implementation of the modifications to the work itself, which are powers that can be exercised only by the creator of the architectural work[8].

The attempt has been made to broaden in some way the field of application of these regulation provisions. The existence has in fact been admitted of a legitimization and an interest of the heirs in concluding the proceedings directed towards recognition, but exclusively from the moral standpoint, excluding any transmissibility of the right to interfere with the integrity of the work.

This is with the further conclusion that the recognition of the important artistic character made by the Administration in the moral interest of the author's heirs in no way legitimates these parties to oppose or to contest, in an administrative setting, subsequent interventions on the work, except for the legitimacy to bring action in civil court based on the combined provisions of articles 20, first paragraph (Regardless of the exclusive rights of economic use of the work, provided for in the provisions of the previous section, and also after the transfer of said rights, the author maintains the right to claim authorship of the work and to oppose any deformation, mutilation, or other modification, and any act to the detriment of said work, that may compromise his or her honour or reputation),
23 (After the author's death, the right provided for in art. 20 can be invoked, with no time limits, by the creator's spouse and children and, should they be lacking, by his or her parents and other ascendants and by direct descendents; and, in the absence of ascendants and descendents, by his or her siblings and by their descendents) and 169 of the copyright protection Law (The action to defend the exercise of the rights that refer to the authorship of the work may give rise to the penalty of removal and destruction only when the violation cannot be conveniently remedied via additions or suppressions, on the work, of the indications referring to the authorship of said works, or with other means of publicity). And in fact, the prohibition of the demolition of the work (without prior authorization by the protection authority) is only and exclusively the effect of the declaration of cultural interest pursuant to articles 10, 13, and 20 of the Code of the cultural and landscape heritage, but cannot be linked to the provisions of law protecting copyright.

It is no accident that the 2004 Code places works of contemporary architecture of particular artistic value not in art. 10, which is to say among cultural assets, but within art. 11, which is to say among things subject to specific protection provisions, since these works are not subject to application of the cultural assets protection regime – including the prohibition of demolition (without prior authorization by the relevant authority) – but only of the provisions expressly referred to in art. 11, which is to say only the provision of the already-cited art. 37 of said Code, for the purposes of the recognizability of the subsidy for the conservation works.

To conclude, a legitimatization and a protected interest of the creator's heirs to apply for recognition of the important artistic character of the architectural work designed by the legal predecessor may absolutely be admitted, but for the sole purpose of protecting the creator's moral right, which is certainly transmissible (and therefore, for reasons of moral recognition of the quality of the work, for reasons of study, of promotion, of valorization of the architect's design work, to increase his or her fame, etc., as well as in opposition to possible contestations relating to the authorship of the design and protests in civil court against any deformation, mutilation, or other modification, and any act to the detriment of said work, that may compromise the honour or reputation of the creator and legal predecessor); they may also be admitted for the purposes of the subsidy provided for by art. 37 of the 2004 Code (provided that these heirs have conserved appropriate title as having domain or possession or qualified holding over the property); but said legitimization and protected interest of the heirs cannot also be admitted for the exercise of the rights of intervention on the modifications of the work (right to the integrity of the work) provided for by the second paragraph of art. 20 – rights that are naturally reserved only for the creator of the design, and that therefore cannot be transmitted.

Even this (albeit timid) attempt to broaden the scope of application of the institution in question was blocked, however, by the Administrative Regional Court (TAR) of Lazio, in the decision of section II-*quater*, 05 December 2018, no. 11798, on Cinema America, which reasserted the old case law (Cons. Stato, sect. VI, 26 July 2001, no. 4122) that rigorously limited the legitimacy to claim particular artistic value solely for the creator of the architectural work[8].

This decision, although reasserting the traditional case law that distinguishes between the right to authorship and the right to the integrity of the work, did not respond to the fundamental question of why the public function of protection (which is expressed in the measure for this purpose by the superintendent or the ministerial body responsible for recognizing the particular artistic worth) should be engaged in a role exclusively serving the sole private right of the natural person of the designing architect, while living, to protest the study and implementation of the modifications that ownership intends to make to the work. The decision of the Administrative Regional Court (TAR) of Lazio, dismissing the opinion of the Italian Ministry's Legislative Office prot. no. 25271 of 17 December 2014, referred to in the measure in support of the legitimization of the heirs of the creator of the architectural work, also denied the possibility of an official initiative of that measure, absolutely ruling out that the Institution in question might relate to

the functions of the protection Administration (at that time the Direzione generale Arte e Architettura contemporanee e Periferie urbane) of 'seeing to the general, objective-type interest' in the protection of works of contemporary architecture of particular interest.

An additional profile that merits attention in the use of this instrument offered by the copyright protection law is represented by the risk of inconsistency among acts and overlapping of the proceedings: that pursuant to art. 20 of the copyright protection Law in question, and the one that had been initiated (or that might be initiated) pursuant to art. 10, paragraph 3, letter d of the 2004 Code.

In particular, much attention must be given to the fact the prerequisites of both the proceedings and the measures appear to coincide to a large degree. Also on the strength of ministerial circular no. 5 of 23 December 2016, partially overlapping are the criteria and the parameters presiding over the assessment of the existence or non-existence, both of the prerequisite for recognition of the important artistic character pursuant to art. 20 of the copyright protection Law, and of the prerequisites for the declaration of particular important interest pursuant to art. 10, paragraph 3, letter d of the Code of cultural and landscape heritage (although the aforementioned circular, in the last sentence of point 5, on page 4, specifies that the report must not re-propose the model of the historical-artistic report that accompanies the decree of declaration of cultural interest, since the requirements that the work must meet and that must be highlighted in the report are different: creativity, originality, renown, quality, innovation, and experimentation in the use of materials and in the application of construction techniques, etc.). And in fact, also taking account of the assessment criteria reported in point 5 of the circular, it does not appear that the assessment requirements and the criteria indicated in it deviate significantly from those usually employed to assess the existence of the particularly important interest due to their [the considered architectural works'] reference with the history [. . .] of art, of science, of technology, of industry, and of culture in general, pursuant to letter d of the same paragraph. And since the ministerial bodies responsible for conducting one proceeding or the other (and for the adoption of one conclusive measure or the other) differ[9], there is a tangible risk of obtaining results of contradiction between acts and proceedings from the same administration, which would constitute a certain flaw of illegitimacy and of possible cancellation of the adopted measures.

Conclusions

A reform of the 2004 Code is therefore needed, aimed on the one hand at extending the field of application of art. 10, paragraph 3, letter d while dispelling the applicative doubts highlighted above, and on the other at introducing, among the «immovable things» for which no age prerequisite (seventy years) is required, the works of contemporary architecture that present a particularly important 'architectural' interest, which is to say a direct and intrinsic one, and not only in relation to the history of architectural culture.

One may also consider the road (logically alternative, but in theory also parallel) of strengthening the protection of works of contemporary architecture in the landscape area (in this sense, cf. Carughi 2011), although this approach, while valorizing the elements of historical interest and context inherent to landscape protection, appears more difficult to relate to individual properties, and would lend itself to being used above all with regard to entire complexes or neighbourhoods (and as such, better relatable to the idea of complexes of immovable things that compose a characteristic aspect having aesthetic and traditional value, including historic centres and nuclei, familiar to our tradition of landscape protection).

The administrative court's decisions cited in the text and in the notes may be retrieved from the Giustizia amministrativa (administrative justice) website (https://www.giustizia-amministrativa.it), under *Decisioni e pareri*.

Notes

1 There is a well-known theory (Giannini 1971) of the cultural asset being subject to a dual 'domain': a useful domain belonging to the private owner, and a public, eminent domain over its cultural meaning (value), which belongs to all. On these themes, see, most recently, G. Morbidelli, *sub* art. 10, in *Il codice* 2019, pp. 133 ff. and, ibid, complete bibliographical references, as well as Bartolini 2019.

2 See the Law no. 133 of 1 October 2020 *Ratifica ed esecuzione della Convenzione quadro del Consiglio d'Europa sul valore del patrimonio culturale per la società, fatta a Faro il 27 ottobre 2005* (Ratification and execution of the Council

of Europe Framework Convention on the Value

of Cultural Heritage for Society, done in Faro on 27 October 2005). In Article 3 of the text (*Measures implementing the Convention*), paragraph 2 reads as follows: «Dall'applicazione della Convenzione di cui all'articolo 1, da realizzare anche mediante la salvaguardia delle figure professionali coinvolte nel settore, non possono derivare limitazioni rispetto ai livelli di tutela, fruizione e valorizzazione del patrimonio culturale garantiti dalla Costituzione e dalla vigente legislazione in materia» (The application of the Convention pursuant to article 1, to be done also through the safeguarding of the professional figures involved in the sector, may not give rise to restrictions on the levels of protection, exploitation, and valorization of the cultural heritage as guaranteed by the Constitution and by the relevant legislation in force).

3 It is known that the repeated attempts coming one after the other in the latest legislatures, to bring to approval a framework law on architectural quality, have yet to yield conclusive effects. But see, most recently, Campania regional Law no. 19 of 11 November 2019 *Legge per la promozione della qualità dell'architettura* (Law for the promotion of the quality of architecture).

4 It is known that the first modification was aimed above all at accelerating and simplifying the disinvestment of public heritage (in essence, that following the Second World War, rightly or wrongly deemed less prized) and at promoting what is referred to as state-property federalism, while the second one was introduced not only to more rationally realign the diversified regimes of public and private, movable and immovable assets, but also to favour the art market and the circulation of movable assets of recent development and of minimum cultural and economic value.

5 For a comprehensive reconnaissance, see Sprinkle Jr. 2007 (suggested to me by prof. Massimo Visone, whom I thank for his useful recommendation). More generally, cf. Carughi 2012.

6 Remaining on the topic of 'historic cinemas', mention is to be made of the Council of State decision – Cons. Stato, sect. VI, 2 March 2015, no. 1003 – that cancelled the constraint (of the direct type, and not of the 'historical-relational' type, pursuant to art. 10, paragraph 3, letter a of the 2004 Code) of the Concordi cinema/theatre in Padua.

7 It may be useful to transcribe the text of artt. 20: «Indipendentemente dai diritti esclusivi di utilizzazione economica dell'opera, previsti nelle disposizioni della sezione precedente, ed anche dopo la cessione dei diritti stessi, l'autore conserva il diritto di rivendicare la paternità dell'opera e di opporsi a qualsiasi deformazione, mutilazione od altra modificazione, ed a ogni atto a danno dell'opera stessa, che possano essere di pregiudizio al suo onore o alla sua reputazione.

Tuttavia nelle opere dell'architettura l'autore non può opporsi alle modificazioni che si rendessero necessarie nel corso della realizzazione. Del pari non potrà opporsi a quelle altre modificazioni che si rendesse necessario apportare all'opera già realizzata. Però, se all'opera sia riconosciuto dalla competente autorità statale importante carattere artistico, spetteranno all'autore lo studio e l'attuazione di tali modificazioni» (Regardless of the exclusive rights of economic use of the work, as provided for in the provisions of the previous section, and even after the transfer of these rights, the author conserves the right to claim authorship of the work and to oppose any deformation, mutilation, or other modification, and any act damaging said work, that may compromise his or her honour or reputation. However, in works of architecture, the creator may not oppose the modifications that should become necessary during construction. Likewise, he or she may not oppose those other modifications that should become necessary to introduce to the already-built work. However, if the work is recognized by the relevant authority as having an important artistic character, the creator will be entitled to study and implement said modifications); art. 23: «Dopo la morte dell'autore il diritto previsto nell'art. 20 può essere fatto valere, senza limite di tempo, dal coniuge e dai figli, e, in loro mancanza, dai genitori e dagli altri ascendenti e dai discendenti diretti; mancando gli ascendenti ed i discendenti, dai fratelli e dalle sorelle e dai loro discendenti. L'azione, qualora finalità pubbliche lo esigano, può altresì essere esercitata dal Ministro per la cultura popolare, sentita l'associazione sindacale competente» (After the author's death, the right provided for in art. 20 can be invoked, with no time limits, by the creator's spouse and children and, should they be lacking, by his or her parents and other ascendants and by direct descendents; and, in the absence of ascendants and descendents, by his or her siblings and by their descendents. The action, should public purposes so require, may also be brought by the Ministry for popular culture, having heard the opinion of the relevant trade-union association).

8 The decision, unappealed by the Administration and therefore res judicata, cancelled, at the ownership's petition, with the ruling in simplified form rendered in the council chamber pursuant to art. 60 of the Italian Code of Administrative Procedure, the Decree of the Italian Ministry of Culture no. 159 of 28 May 2018 (prot. no. 546698 of 04 June 2018), which had recognized the important artistic character of the architectural complex of the former Cinema America, located in Rome at Via Natale del Grande no. 6, pursuant to and to the effects of

articles 20 and 23 of the Law no. 633, of 1941.

9 Based on the latest organization regulation in force (Prime Minister's Decree no. 169 of 02 December 2019) responsibility for the 'relational-external' constraint pursuant to art. 10, paragraph 3, letter d of the Code should belong to the Soprintendenza – such as investigation and proposal: art. 41, paragraph 1, letter l – and to the Commissione regionale per il patrimonio culturale – such as the adoption of the conclusive document: art. 47, paragraph 2, letters a and b –, while the Direzione generale Creatività Contemporanea (art. 21, paragraph 2, letter i) would be responsible for the declaration of the important artistic character of works of contemporary architecture, pursuant to and to the effects of article 20 of Law no. 633 of 22 April 1941, and of article 37 of the Code.

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