What "Rights" for 20th Century Monuments ?

A troubleesome topic for a Meeting at the *Accademia di Architecttura* in Mendrisio

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The final round table of the international study days *"Diritto e salvaguardia dell'architettura del XX secolo /* Law and the Preservation of 20th Century Architecture", June 18–19, 2012. From left to right: **Bruno Reichlin, Ana Tostões, Roberta Grignolo, Marco Borghi**.

The protection of 20th century architecture has by now become a fully-fledged part of the discipline of preservation, and even the heritage of the second post-war period is increasingly recognised as worthy of conservation. Nonetheless, in practice, this cultural awareness still clashes with the difficulties attached to adapting buildings to present day regulations. Even when intervening on buildings that are officially recognized as "monuments", from one country to another and even from one region to another in the same country, there is great variety in how dispensations from applicable regulations are allowed.

This is what led to the idea of a supranational forum for a comparison of customs and practices associated with the "rights of monuments". The International Study Days on "Law and the preservation of 20th century architecture", organised by Roberta Grignolo and Bruno Reichlin, were held at the *Accademia di Architettura in Mendrisio* (*Università della Svizzera Italiana*), on June 18 and 19, 2012 as part of the interfaculty research project "Critical Encyclopaedia for the Restoration and Reuse of 20th Century Architecture".

The intent of the meeting organisers was to gather around a table not only architects and engineers engaged in 20th century preservation (familiar participants in 20th century heritage meetings), but legal experts and lawyers too, specialised technical practitioners, as well as representatives of architects and of national and international preservation institutions.

As the preparatory discussions revealed, the topic of the meeting immediately aroused great interest because of its focus on "issues no one wants to deal with". The top echelons of **docomomo** International and the Legal Office of the Swiss Society of Engineers and Architects (SIA) chose to sponsor the initiative and take an active part in the organisation of the conference.

One might rightly question as to whether, in dealing with the issue of how law and heritage are related, it was appropriate to limit the scope of the debate to 20th century monuments alone.

We believe that, in discussing laws, standards and regulations, there is no substantial difference in how they are applied to 20th century architectural heritage as opposed to the heritage of previous centuries.

Legal provisions applicable to monuments are applied equally to all heritage buildings, regardless of their period. But this, possibly, is one of the most sensitive issues.

The heritage of the 20th century exhibits specific features that cannot be disregarded when authorities require that compliance measures be applied.

Firstly, compared to architecture from previous centuries, 20th century buildings present greater complexity in many areas. Suffice it to think of high-rise buildings, of large residential complexes (e.g. Le Corbusier's *Unités d'Habitation*), of the variety of building types that modern civilisation has developed to accommodate large numbers of people or public flows (entertainment facilities like theatres or stadiums, and infrastructure hubs like airports and railway stations). In addition, some of the intrinsic features of recent architecture also require consideration: the spatial complexity, one of the drivers in 20th century architectural research (think of the spatial continuity which marks many 30s and 50s masterpieces), and the poor thermal inertia of 20th century envelopes, which is an issue in improving energy efficiency.

A second good reason for focusing on the last century when debating the issue of how law and heritage are related, is the fact that, compared to the revered architecture of previous centuries, it is far more difficult to defend recent architectural works against the demands of compliance authorities in fields like safety, seismic risk, etc.

It should be added that the temporal, formal and technical proximity of the last century's heritage to contemporary architecture, frequently induces compliance authorities to expect that 20th century buildings be brought up to the standards applied to new buildings (this is especially true with respect to energy efficiency and systems).

There are different levels at which legal issues can affect interventions on existing buildings, and this was taken into account by the structure of the meeting.

The first level concerns the types of instruments available to protect and list heritage buildings.

Protection exists in differing degrees according to the country being considered (in the UK buildings can be listed "grade I", "grade II*" or "grade II"; in France one finds *"bâtiments classés"* or *"inscrits"*; etc.) and the efficacy of listing provisions also varies from country to country (in France, protection covers building exteriors, interiors and proximal surroundings; in the Netherlands and Norway protection only applies to building exteriors, unless otherwise specified in the listing document; in the UK instead, listing applies to the whole building and all its contents at the time the listing becomes effective, regardless of actual or alleged authentic-

ity). The above differences reveal the diversity of national cultures where preservation is concerned, and at the same time they also influence national heritage culture.

The duration of protection may also vary: in some American states, officially recognised monuments enjoy protection in perpetuity, while in many European countries listed buildings may, in some cases, be "de-listed" or "de-classified", without any cultural explanation.

Moreover, heritage legislation may also have economic consequences with respect to eligibility for preservation work financing and funding, as well as tax facilitations or incentives, etc.

The meeting also addressed a further instrument for the protection of 20th century heritage: authors' rights. This set of laws was created to protect works produced by human creativity from subsequent changes, and it can be enforced for the preservation of outstanding 20th century architectural work. A point in case is the Flaminio stadium in Rome, designed by Pier Luigi Nervi between 1956 and 1958. Extensive restructuring work had been envisaged to turn it into the city's main rugby stadium. Action taken by the engineer-author's heirs led to a confrontation between the relevant authorities and the transformation project was abandoned.

In other cases, however, the issue of authors' rights may prove to be double edged. The *Olympiapark* in Munich, designed for the 1972 Olympics by Günter Behnisch was listed in 1998. When the municipality and the managing company decided to erect new buildings within the original complex, Behnisch asserted his author's rights to avoid having someone else modify the complex. However, the alternative project he submitted envisaged such extensive alterations that the local heritage authorities had to step in to avoid disruptions of the original complex.

The above issues are some examples of the topics discussed during the first session of the meeting.

Regulatory compliance is another level at which legal issues may affect interventions on existing buildings, and this was the focus of the discussion for the remaining sessions of the study days.

In intervening on a heritage building, architects must ensure that the building complies with current planning regulations and in particular with provisions relating to fire safety, the elimination of architectural barriers, public safety, the safety of staff and maintenance personnel, seismic safety, and lastly sustainability and energy efficiency.

In cases of legally recognised "monuments", applications can be presented to obtain dispensations. These are equivalent safety solutions which have a lower impact on a building that is considered to be of public interest. The term dispensation, however, often seems to imply an attempt to find loopholes to avoid problems, and this is why one often speaks of the conflict between cultural and safety interests when heritage is at stake. It actually is more a matter of different facets of one and the same issue: the overall public interest.

Furthermore, as already stated, obtaining dispensations varies greatly from one country to another and even within the same country. Additionally, compliance or habitability certification authorities appear to enjoy varying degrees of freedom: in some cases a dialogue-negotiation process is possible (or even required) between the architects and the relevant authorities, in other cases such dialogue is practically non-existent.

To provide the audience with a better understanding of the legal notions involved, several experts discussed the issues of dispensation and equivalent safety, illustrating how they are implemented and providing replies to questions such as: Can one refer to common sense (the kitchen recipe notion of "as required" or *"quanto basta"*) in adapting buildings to existing regulations? In the case of buildings for which the probability of certain types of accident is minimal (e.g. a fire breaking out where there is nothing combustible), how can one require that the principle of proportionality be applied to the actual risk and to the required compliance interventions?

Another key issue is accident liability: in most legal systems it lies with the owner. In the event of the owner being a private citizen, it will not be in his best interest to seek dispensations from existing rules and regulations, hence the paradox of owners being less willing than compliance authorities, to accept equivalent safety solutions.

Following the overview of theoretical issues and key legal notions during the first day of the meeting, the second day focused entirely on practice.

Experts and technical practitioners from several countries presented their national rules and regulations for fire safety, accessibility, seismic safety, securing hazardous materials and compliance with energy standards. The goal of the session was to discover common practices and their underlying principles, from which generalisations can be more easily drawn.

During the last session the floor was handed over to practitioners: architects from a variety of countries, each with his or her extensive experience in the field of recent heritage. They presented cases of heritage interventions in which regulations played an important role in defining the solutions that were then implemented. The cases included, among others: Wilhelm Marinus Dudok's *Collège Neerlandais* (1927) in the *Cité Universitaire* in Paris, where fire compliance in the auditorium was achieved by expanding the compartmentalisation area to a point in which the fire doors could not disrupt the original material elements and spatial perception; Alvar Aalto's House of Culture in Helsinki (1955-58), where the original wooden fire doors were preserved and merely coated with intumescent paint; Vantaa City Hall (1957), where the parapets were restored to their original state–despite their non-compliance–thanks to the argument that the building is only used during the day and that it is not attended by children; Scharoun's *Geschwister-Scholl-Gesamtschule* in Lünen (1956-62), where a fragmentation of the interior space of the hall, with its almost urban features, was avoided by compartmentalising only the upper part of the staircases to the first floor; Haefeli, Moser and Steiger's *Kongresshaus* in Zurich (1936-39), where the spatial continuity between areas located on different levels still remains an unresolved fire safety issue.

The contributions presented during the study days testify to the great diversity of heritage provisions and approaches from one country to another. The meetings are in no way intended to provide ready recipes for regulatory compliance procedures, nonetheless, it was clear to all meeting attendees that the greater the number of regulatory compliance cases one can refer to, the more easily one can find alternatives for prescribed solutions by assuring equivalent safety levels. An anecdotal collection of recent heritage restoration and reuse cases, where issues related to protection, listing, and compliance requirements (in the areas of personal safety, fire safety, accessibility, energy efficiency, etc.) have been addressed and solved in ingenious ways, can become a useful instrument for architects involved in this field, allowing them to develop arguments and find solutions that local authorities can approve.

For these same reasons, we chose the supranational level to discuss relevant legislation and regulations for architectural heritage interventions. Consequently, the objective of the final discussion was to gather arguments, stimuli, positions and best practices so as to then make them available to international protection associations like **docomomo** International.

The meeting contributions and the closing discussion made it clear that one of the key issues is the extraordinary proliferation of regulations from the second half of the 19th century onwards: this subverted the previous interrelation between so called "technical standards" and the Constitution. Architecture was originally governed by "standard practice", but gradually this has given way to a proliferation of technical regulations that have

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Figure 1. **Le Corbusier**, *Unité d'habitation*, Marseille (1945–1952), fire on February 9, 2012.

Figure 2. **Otto Rudolf Salvisberg**, *Institut für Geologie, Universität Bern*, Bern (1929–1931).

Figure 3. **Roland Korn, Hans Erich Bogatzky**, *Staatsratsgebäude*, Berlin (1962–1964).

Figure 4. **Armin Meili**, *Gemeinschaftshaus der AGBrown*, Boveri & Cie, Baden (1951–1954).

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colonised fundamental constitutional rights, like the preservation of cultural heritage. Hence, despite the principle of constitutional primacy, technical standards–which are basically derived from a practice-based induction approach–have gradually gained the upper hand and are now applied with a literal and paralysing attitude on the part of authorities or experts who are terrified by civil and criminal liability issues.

One way out of this impasse would be to require "constitutionality control or opinion", whereby architects, with the support of a legal expert, could challenge a compliance request from a relevant authority, were it to be deemed contrary to the "rights of the monument". Were such a proposal to take foot, it would restore the correct priorities of legal provisions, conferring primacy to constitutional principles and placing practice based regulations at a lower level.

The meeting also highlighted how present-day architects, whose practice is in the field of 20th century heritage, bear the full burden of having to prove the quality features of the monument they are dealing with, often without having a specific institutional or regulatory framework. Over the coming years heritage interventions-recent heritage especially–are bound to acquire increasing weight when compared to new building. To avoid approaching this substantial stock of heritage as if it were always an exception to the rule, it would be in the interests of architects' associations to create a legal framework or specific instruments–*ad hoc* regulations, committees of experts, specialised surveyors, etc.–to strengthen and assist this expanding sector.

In today's financial and environmental situation, the protection of recent architecture has ethical as well as aesthetic implications. A new institutional framework could be applied to listed buildings first, and then to architectural work where value has been recognised by historiography, but not yet by institutions.

It is to be hoped that, on the basis of different national experiences and by developing ad hoc policies and legal instruments, it may become possible to guide interventions on existing buildings toward a more realistic approach, without penalising the use and reuse of existing resources.

Jointly with all the participants in the meeting, the organisers hope that national and international bodies concerned with the protection of recent heritage will make use of the proposals that have issued from the study days and take them to a higher level of discussion. Were they to be conveyed to the relevant policy makers, they could become valuable material to support the development of more consistent national and international strategies which, at long last, would assure fitting consideration for the "rights of 20th century architectural heritage".

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