Adriano Buzzanca[1]

ENHANCEMENT OF THE SYSTEM OF CULTURAL HERITAGE OF PUGLIA AND TOURISM

Abstract

***Purpose**: The study of the enhancement of the beauties and cultural heritage present in Puglia, in the different forms through which it is promoted, is inspired by the discipline introduced with the d.lg. n. 42 of 2004 and subsequent amendments, containing the „Code of cultural heritage and landscape" and develops in the analysis of the exercise of administrative power in accordance with the principle of consensuality..*

***Method/ approach**: The first area of research reflection starts from general considerations on the functions of protection and enhancement in the renewed constitutional arrangement and in the discipline of the Code.*

***Results:** The public participates in the management and enhancement of those cultural assets of the private owner through the use of agreements for public and various consensual use.*

***Conclusion/findings**: The present research, therefore, analyzing the consensual instruments between private individuals and public aimed at the enhancement of cultural heritage for the purposes of public enjoyment of the same, compares the cases in which in the local context (Teatro Petruzzelli, Cava dei Dinosauri) did not succeed, highlighting the critical issues with detrimental consequences, both for the owner (up to the extrema ratio of expropriation), both for the State.*

***Keywords**: Cultural heritage present in Puglia, process of valorisation, forms of participation, relations between the public administration and private individuals.*

1 Adriano Buzzanca, PhD, official at Ministry of Culture, avv.a.buzzanca@gmail.com

1. INTRODUCTION.

The study of the enhancement of beauties and cultural heritage, in the various forms through which it is promoted, is inspired by Legislative Decree no. 42 of 2004 and subsequent.m amendments, containing the „Code of Cultural Heritage and Landscape" and develops in the analysis of the exercise of administrative power in accordance with the principle of consensuality, through the use of consensual forms and in the perspective of the negotiability of administrative action, which become the most suitable instruments to guarantee the protection and enhancement of the aforementioned assets.

The research starts from the study of the contributions of the doctrine related to the relations between private property and public prerogatives in the light of public interests, examining the discipline of cultural heritage of private property between conformational constraints and social function.

In particular, the special discipline prepared for cultural goods aims to combine two different utilities, the cultural and the economic, thus making it possible to identify the faculties that the private owner can exercise, which are precluded and which can be recognized under strict public control.

The activities of protection and enhancement of the asset are implemented through the affixing of the bond that expresses all the legal effects to safeguard the maintenance of the conditions on which the connection between the good and cultural identity of the same is based. In fact, the constraint determines a close relationship between the way of being of the good and the public interest connected with cultural protection, with the consequence that the owner or possessor has specific obligations not to change their intended use and not to use the goods for uses that endanger their integrity or decorum.

In the light of this preamble, the first area of reflection of this work starts from considerations of a general nature in the renewed constitutional structure and in the discipline of the Code, with reference to the relations between the Ministry, the Regions and other local authorities that through art. 118 of the cost. expressly enshrines the important principle of cooperation between municipalities, metropolitan cities and provinces in the exercise of protection functions.

This is followed by the survey on the participatory enhancement of privately owned cultural heritage, which highlights the synergy between public and private in the protection, enhancement and management of cultural heritage and in particular the qualification of subjective legal situations. The relations between the public administration and the private sector now assume a multidimensional structure, in which, in addition to the public interest, the interest of the private owner and the interest of the community, other interests also emerge, such as those of private financiers.

The forms of participation of private individuals in the cultural heritage sector can be of various types, such as, by way of example, additional services, sponsorships, liberal disbursements.

The public, on the other hand, makes use of consensual tools (collaboration agreements, negotiated programming, memoranda of understanding, organizational and program agreements) and conventions for public usability, in order to participate in the management and enhancement activities of those cultural assets of the private owner.

Private owners by adhering to the aforementioned agreements can access public subsidies for the recovery of cultural property also for the purposes of public usability by the community; in this context, the enhancement of cultural heritage takes on a broader meaning because it is inserted in the relations between society and territorial identities.

The present study, analyzing the consensual tools between private individuals and public administrations aimed at enhancing cultural heritage for the purposes of their public usability, takes into consideration some cases that emerged in the local context (Teatro Petruzzelli, Cava dei Dinosauri) that have not produced positive results both for the owner (up to the *extrema ratio* of expropriation), and for the State, unlike other cases (Villa Pignatelli) in which this process of enhancement has taken place successfully.

The contribution aims to raise awareness and encourage the use of conventions for the enhancement and public usability of the cultural heritage of Puglia, as well as the various consensual modules (collaboration agreements / negotiated programming / memoranda of understanding / organizational and program agreements) which represent an irreplaceable tool to obtain public grants for the aforementioned activities.

It is a valid support for the actors involved in the process of enhancement of cultural heritage (private owners, local authorities, Regions and Mibac), useful for the exchange of experiences and best-practices in order to strengthen and promote strategic territorial enhancement models for local development, while strengthening social sustainability through a greater use of its cultural heritage and the same territorial identity.

2. THE CONSENSUAL ACTIVITY OF THE P.A. AS A VALID ALTERNATIVE TO THE AUTHORITATIVE MODEL.

The Public Administration, in the exercise of its functions, may avail itself of both the authoritative power and the instruments of a private nature.

This faculty is governed, with reference to consensual activity, by the dictate referred to in art. 1, paragraph 1-bis, l. n. 241 of 1990 (as amended by l. n. 15 of 2005). The rule states that 'the public administration, in the adoption of acts of a non-authoritative nature, acts in accordance with the rules of private law unless the law provides otherwise'.

In particular, contractual autonomy «cannot be contrary to the table of values underlying the legal system; like all freedoms, it is part of a context of hierarchically ordered constitutional and community values and cannot be transformed into an instrument of prevarication of the citizen. Hence the reference to personalistic, solidarity and environmental values, which tend to prevail over market freedom: contractual autonomy must consist in "positive" action and, in any case, cannot escape limits and controls aimed at guaranteeing "fair" relationships» (Pennasilico, 2012).

The p.a. can, therefore, pursue the public interest through contractual relationships based on the consent expressed by the interested parties as an alternative to the authoritative activity and the procedural activity.

The administrative jurisprudence has shown a *favor* towards the consensual activity of the p.a., precisely because the provision and the contract are placed on the same level thanks to the participation in the procedure of the private individual. Thus, the contract becomes an instrument for the pursuit of the public interest as a result of the participatory activity, in this way, the p.a. strips itself of its role of authority and exercises discretion through consensual forms of a private nature for the pursuit of the public interest (Plaisant, 2018).

The private through the agreements greatly affects the administrative action, obtaining a shared and binding decision for the paciscents, where the content of the agreement, in fact, objectively conditions the stipulation and becomes an instrument for the purposes of the review of legitimacy on the choice made by the p.a. (Clarich, 2016).

The legislator, precisely in order to guarantee the impartiality and good performance of administrative activity, has established that "in all cases in which a public administra-

tion concludes agreements in the cases provided for in paragraph 1, the conclusion of the agreement is preceded by a determination of the body that would be competent for the adoption of the measure" (Article 11, paragraph 4-bis, l. n. 241 of 1990). The administration, in support of the reasons inspiring the public interest, must state the reasons which led it to prefer the conclusion of the agreement instead of the exercise of the authoritative activity (Mastragostino, 2011).

In this regard, the position claimed by the private individual is worthy of protection both in the execution phase of the agreement and in the procedural phase through the application of participatory procedural guarantees and in the exercise of a consensual activity (Battelli, 2017). In particular, the private individual towards the p.a. who adopted the determination has a pre-binding legitimate interest, which can be protected before the administrative court in the event of silence or refusal (Cerulli Irelli, 2005).

The fact that the administration did not adopt the reasoned decision renders the agreement vitiated by illegality and, therefore, open to appeal.

Therefore, after a careful evaluation of the private proposal, the negotiation phase is followed by the determination of the p.a. and the consensual elaboration of the content of the agreement. In fact, the legislator, by virtue of the aforementioned art. 11, paragraph 4-bis, has expressly established that the agreement is to be considered as an expression of a phase subsequent to the adoption of the determination (Caringella, 2017).

Once the agreement has been reached between both public and private parties, the public administration that decides not to enter into the agreement will be exposed to a series of remedies, to which the private individual can resort, suitable for reviewing the legitimacy of the administrative action with reference to the refusal or silence of the p.a. Finally, the private individual may request the possible execution of the stipulation intervened, in addition to compensation for the damages suffered.

3. THE CONSTRAINT AS A TOOL FOR THE ENHANCEMENT OF CULTURAL HERITAGE

In the exercise of the functions of protection of cultural heritage, it is necessary to identify those categories of goods that are subject to protection and to identify the goods subject to direct constraint (art. 10 c.b.c.).

The bond is defined by the majority doctrine as a discretionary act of the public administration, ascertaining the cultural quality of the asset. However, the bond is not only an expression of the cultural value of the good for the purposes of protection, but also of the conformative power, which finds its raison d'être in the social function of the right to property (art. 42 cost.) and which must not be confused with the ablative power of the p.a. (Severini, 2016).

With reference to privately owned goods, characterized by a public cultural functional destination, the general interest is satisfied directly through private property; indeed, there is the coexistence between the utilities of the *res* for the owner and those, instead, from which the community can benefit.

The public interest conforms property and applies a regime derogating from the common ordinary discipline: this regime is based on the social function, which the Constitution reconnects to private property, art. 42, paragraph 2, cost., and is characterized by peculiar constraints on the faculties of enjoyment and disposition of the owner, or by the imposition of obligations to do (Rodotà, 2013).

The doctrine has wondered whether the social function has the effect of legitimizing any intervention of the legislator on private property, provided that it is motivated by

needs of general interest, or whether the private belonging of the good can represent a factor of resistance to the characterization of the discipline of goods in substantially publicistic terms.

The debate has internally divided the doctrine and is not without importance.

A first orientation considered that property is the expression of a situation determined by the law both in content and in its object, in the sense that it is not possible to admit a legal meaning of property outside of what derives from the legal determinations of the modes of purchase and enjoyment, or limits.

As a result of that approach, it would be arbitrary to argue that property ‚is endowed with an intrinsic virtue, which justifies its recognition and guarantee' (Costantino, 1982).

In the light of that reading, the discipline of property must be interpreted in the most appropriate sense to implement the needs and interests worthy of protection of the subjects, other than the owner, who enter into a relationship with the same, summarized with the formula of the ‚social function'.

According to another orientation, however, the limitations aimed at ensuring the social function of the asset cannot substantially sacrifice the position of the owner, since there is a minimum content that cannot be violated in any way (Plaisant, 2018).

That limit consists in the ordinary enjoyment of the property, in the sense that the bond is capable of depriving the owner of the normal enjoyment of the property itself, thus nullifying the constitutional guarantee present in the right to property.

With regard to the procedural aspects, the declaration of interest - the so-called binding measure - represents the final act of an administrative procedure (art. 14 c.b.c.), which is initiated by the territorially competent Superintendence, ex officio or at the reasoned request of the local authorities concerned, followed by the formalities provided for in terms of administrative procedure, from the communication of initiation of the procedure to the notice of conclusion of the same (Manganaro et al., 2018).

The doctrine considered that the *rationale* of the discipline was an expression of the need for effective protection of things of cultural interest.

Following the issuance of the declaration, private owners, possessors or holders are subject to a *legal* obligation to ensure the conservation of the aforementioned assets (art. 30, paragraph 3, c.b.c.), as well as allowing its public usability. In addition, if the same goods need maintenance interventions suitable to safeguard the cultural identity, conservative, voluntary or imposed interventions may be carried out.

The Code, therefore, establishes that cultural heritage must be subject to protection through a coherent, coordinated and planned study, prevention, maintenance and restoration activities (art. 29 c.b.c.), providing that maintenance and restoration interventions are carried out through personnel with specific skills (art. 29, paragraphs 6 and 10, c.b.c.).

4. CULTURAL HERITAGE BETWEEN FUNCTIONS OF PROTECTION AND ENHANCEMENT

Cultural heritage is characterized by being a testimony of civilization, not necessarily anchored to a local or national identity, being able to also be bearers of values on the universal level, sometimes expressly recognized as in the case of sites declared World Heritage Site by UNESCO.

This universality of the cultural value of which the goods are bearers cannot fail to have repercussions on the legal regime of the same.

The questions that arise are largely attributable to the dichotomy between the two administrative functions that characterize the cultural heritage sector: on the one hand, the protection, aimed at safeguarding the physical preservation of the „material support" of cultural value; on the other, the enhancement, aimed at the fruition and dissemination of the same value.

The different criteria for subjection to the relevant discipline are justified by the relationship between private property and public prerogatives that has known different stages, depending on the preponderance of particular interests incorporated in the asset.

If the function of protecting the cultural good includes all the prescriptions, measures, interventions aimed at guaranteeing the nature of the good itself, the change of perspective - in relation to the emergence of the social function of the cultural heritage derived from the aforementioned Article 9 of the Constitution, which combines the public interest and that of the owner of the property, the interest of the community in the enjoyment of the good identified as an economic resource to be valued compatibly with its social function (of public good intended for collective fruition) and no longer as a mere object of conservative protection - leads to a new dynamic conception of protection, oriented to the public enjoyment of the cultural good, as it is naturally destined to public fruition and enhancement, as tools for the cultural growth of society.

In this new and broader sense, protection corresponds to a protection action that is not only carried out through a legal-administrative regulation on the use and circulation of goods, but also includes positive actions of intervention aimed at concretely identifying the goods, preventing their deterioration and maintaining them, as well as to restore its good condition through a programmed conservation policy contextualized to the territory.

And in this new dynamic dimension, protection pursues a pluralitity of objectives that can be traced back to two subcategories: conservation and enhancement.

In the light of the new Code, the two action profiles are functionally integrated and form a necessarily unitary task that requires an active policy of „valorization" of goods open to collective use, the implementation of which requires measures to allow, facilitate, increase the possibility of access to protected goods, and therefore the perception and learning of the values they preserve.

In this way the direct bond is not only an expression of the cultural value of the good for the purposes of protection, but also of the conformative power that finds its raison d'être in the social function of the right of property referred to in Article 42 of the Constitution. and in the need for this good to be valued and made usable in the collective dimension.

It is clear that the main purpose of the decree imposing the bond consists in identifying individual assets of private property, which are of particular importance as they have qualities and characteristics such as to make them of particular interest to the entire national collective.

5. THE PROPRIETARY PREROGATIVES.

With reference to the relationship between the owner of the property and the activities of protection and enhancement, it should be noted that the private individual, with respect to the protection activity, represents the taxable person.

If the property is owned by a private individual, to highlight the cultural nature of the same, it is necessary for the Ministry to adopt the *declaration* of cultural interest, which ascertains the presence of artistic, historical, archaeological or ethno-anthropological interest or the testimony of the identity and history of public, collective and religious institutions.

The same goes for the villas, parks and gardens, which have historical and artistic interest, and the rural architecture testimonies of traditional rural economy.

The private owner, possessor or holder for any reason appears to be the recipient of the notice of initiation of the procedure by the Superintendent, relating to the declaration of cultural interest of the property.

Subsequently, once the proceedings have been concluded, the declaration adopted by the Ministry is notified and recorded in the land registers.

In particular, the private owner of a cultural asset can enjoy it freely, although the proprietary prerogatives must conform to the cultural need, to that of conservation of the asset itself, in order to guarantee its use by the community, using the same asset for uses compatible with the historical and artistic nature, guaranteeing the protection of the value of which it is the bearer (Mabellini, 2016).

Any intervention on the property must be authorized in accordance with the provisions of the Code of Cultural Heritage, as well as conservative interventions, in order not to incur criminal and administrative sanctions (Frigo, 2010).

Having regard to the owner of the property, it should be noted that with reference to protection, the private individual is considered by the legislation as a taxable person, unlike the valuation, where he can become an active subject.

In fact, for the purposes of enhancement, the Code provides for the possibility of resorting to the stable establishment of resources, networks and structures, as well as technical skills, financial or instrumental resources, aimed at promoting knowledge of cultural heritage, thus ensuring better conditions of use and public use of goods.

In order to achieve this objective, the State, the Regions and the local autonomies may conclude agreements for the coordination of the methods of implementation and the necessary times also by means of legal entities established *ad hoc*.

Private individuals may also participate in the agreements, which must allow the public use of the cultural assets they own, with the exception of the provisions of art. 38 c.b.c., by virtue of which the goods covered by the interventions can be realized with the contribution in both total and partial expenditure of the State, therefore, making them accessible to the public on the basis of agreements or conventions (Severini, 2015).

The private individual can undertake atypical activities of enhancement, precisely because it focuses on an open concept that includes any initiative aimed at increasing the promotion, dissemination and use of cultural heritage.

The initiative of the private individual to the enhancement can be motivated by various reasons, although the Code considers that this activity is socially useful with the purpose of social solidarity.

In particular, the scarcity of financial resources has fostered greater cooperation between the public and private sectors, thus increasing the degree of conflict between conservation and fruition.

The participation of private individuals in the cultural heritage sector can take on different configurations, attributable to various hypotheses, such as, by way of example, additional services, sponsorships, liberal disbursements, and in a broader perspective, as in the case of recovery and urban redevelopment interventions for social and economic development.

The Code provides that there may be private initiative support for enhancement activities on privately owned cultural heritage, in harmony with the interest in the dissemination of culture.

6. THE ENHANCEMENT OF CULTURAL HERITAGE

The Code of Cultural Heritage deals with the enhancement, first of all, in Articles. 6 and 7, contained in the general provisions, but the founding nucleus concerns Articles. 111–121, which represent the principles to which regional legislation must comply with in the field of valorisation.

The legislation highlights the acquired awareness of the existence of cooperation between public and private in enhancement activities.

In this sense, the legislator promotes, compared to the past, the use of consensual forms that become an indispensable tool in order to guarantee the forms of coordination between public subjects and between the latter and private individuals, as provided for by the new art. 118 cost.

The Code of Cultural Heritage enhances the cultural heritage of public belonging by making a distinction between the subjective and objective profile.

From a subjective point of view, the reference that the law makes primarily concerns public administrations, allowing private individuals to play a role in conservation and enhancement (among the interventions carried out are the banking foundations as the first experiments of public-private museum management that promote exhibition, educational, editorial activities, etc., in addition to the subjects that operate in additional services such as bookshops, cafes, audio-guides and guided tours).

In this way, valorisation activities take on a dutiful character, rather than simply possible.

Furthermore, it notes the distinction between the goods, respectively, inside and outside the places of culture: for the former, the enhancement is ensured „in compliance with the fundamental principles established by this Code"; while, for the latter, it is established is ensured „compatibly with the performance of the institutional purposes for which these assets are intended" (Corte conti, Sez. centr. contr., delib. 4 agosto 2016, n. 8/2016/G, *Iniziative di partenariato pubblico-privato nei processi di valorizzazione dei beni culturali*, in *www.corteconti.it*, p. 19).

There is a graduation of duty, which emerges in an absolute way for the goods present in the institutes and places of culture, in implementation of the cultural vocation of these seats, and vice versa is configured in a relative way for the goods located elsewhere.

Art. 112 of.b.c., traces the boundaries of the matter „valorization", which art. 117, paragraph 2, cost. assigns to the competing legislation State-Regions.

The interpretation is articulated along two lines, among other things connected, it is appropriate to define in the first place, which activities should be included in the enhancement and in the second place, the relationship between the legislative powers and the dominical regime (Michiara, 2016).

7. CULTURAL HERITAGE OF PRIVATE BELONGING AND ENHANCEMENT

The Code of Cultural Heritage, with regard to the enhancement of cultural heritage of private belonging, defines, in general terms and principle, the final and supporting element of the structure given to the articulated phenomenon of the enhancement of cultural heritage.

After being qualified with respect to protection, the enhancement of cultural heritage is regulated in its most typical forms.

In this regard, the provisions that make up art. 113 of the Code, rather than dealing with the general aspects of the activities and structures responsible for the enhancement of privately owned cultural heritage, define the characteristics and role of support from public entities (Sciullo, 2017).

For privately owned cultural assets, the owner usually defines the *an* and the *quomodo* of any enhancement activities, being able to verify the intervention of public subjects in mandatory hypotheses: in the case of expropriation when „it responds to an important interest in improving the conditions of protection for the purposes of public use of the goods themselves".

This, in practice, is the only case in which an initiative to enhance a private cultural asset can be carried out through expropriation on an authoritative basis.

In addition, the hypothesis of the alienation of cultural property in favor of private individuals, pursuant to art. 10, Presidential Decree n. 283 of 7 September 2000, allows the purchaser to impose obligations on the purchaser in the sale contract with reference to the enhancement of the alienated assets (Piperata, 2004).

As far as the intervention of public entities is concerned, this is configured for „conventional and incentivized enhancement techniques, such as agreements for the promotion of fruition, tax breaks and subsidies" (Stella Richter & Scotti 2002).

The Code, therefore, in admitting public support in the enhancement of privately owned cultural heritage, sets out some fundamental points: it recognizes that the enhancement is a private initiative; provides that it can be substantiated in an activity and in an ad hoc structure and finally, establishes that the support can come from the State, from the Regions and from the other territorial public bodies (Piperata, 2004).

The legislator also provided that public support for valorisation must be adapted to the relevance of the private cultural object to which it relates.

In other words, that provision creates a proportional link between the *amount* of public support and the relevance of the asset, so as to consider that profile to be the only factor capable of revealing the commitment of public intervention (Stella Richter & Scotti, 2002).

The Code outlines a model based on the principle of consensuality, through the instruments of negotiation and agreements, the agreement, and this from the sphere of relations between public administrations to that of relations between these and private individuals (Chinè et al., 2018).

The use of consensual forms for the enhancement of cultural heritage, carried out by the legislator through the provision in question, is the expression of a point of arrival deriving from a long evolution and at the same time, constitutes an innovative element.

Indeed, from the first point of view, a synergy between different competences is realized, with the consequence that both the sector system and the constitutional jurisprudence have always allowed collaborative-cooperative logics to prevail.

On the other hand, there are also numerous cases in which recourse is made to non-typified contractual acts, signed on the basis of the general rules on negotiating administration, which are called ‚memoranda of understanding'.

The Code in art. Article 112 is innovative in that the rule expressly regulates the figure of the agreement as an instrument relating to enhancement activities and, in particular, as a joint exercise of the functions of local and regional authorities.

In this way, the aspiration to consultation, which until now had remained as a mere affirmation of principle, rather than in the preparation of operational instruments, seems to be fully realized (Battelli, 2017).

8. FROM THE AUTHORITATIVE FORM TO THE CONSENSUAL ONE

The evolution of the administrative activity of the public administration has made it possible to conclude agreements (Article 11) - with the private sector, aimed at pursuing

the public interest - whose content of the final measure is identified on a discretionary basis or the agreement replaces the measure.

In this way, the principle of the negotiability of administrative powers and the principle of the participation of the citizens concerned in the procedure have been affirmed.

With reference to the agreements between p.a. and private individuals, pursuant to art. 11 l. cit., in compliance with the principles of procedural participation (*ex* art. 10 of l. n. 241 of 1990), the legislature intervened through the introduction of article 7 of l. n. 15 of 2005, providing for the possibility of concluding agreements in lieu of measures, outside the principle of typicality of the same unlike in the past (Mazzarelli, 1995).

With the introduction of the legislative amendment, the consensual forms become ordinary instruments for the exercise of administrative action, therefore, the traditional principle of the single track is replaced by the so-called double track, so that the administration has the possibility to choose between the authoritative form and the consensual one (Dugato, 1996).

Corollary of this provision is the principle of free stipulation of agreements between private individuals and the public administration, although the aforementioned types of agreement must be preceded by the determination of the body considered competent to take the final measure, this to guarantee the impartiality and good performance of the administrative action *pursuant* to Article 97 of the Constitution.

Such agreements, therefore, generate legal effects without the public administration having to carry out further activities that are an explanation of the exercise of power.

It should be pointed out that agreements between the public administration and private individuals make it possible to have recourse to institutions suitable for concerting the pursuit of the public interest with the private sector.

Indeed, art. Article 11 of Law no. 241 of 1990 introduces two types of agreements between administrations and individuals: procedural agreements, also defined as supplementary, and those replacing the measure (Plaisant, 2018).

The supplementary agreements concluded between the public administration and the private individual, as part of the administrative procedure, have the purpose of determining the discretionary content of the final measure. The administration, therefore, exercises power through the issuance of a measure, the content of which, however, becomes the subject of the consent of the private individual (Di Camillo 2005).

Therefore, the parties may determine and extend the content of the measure itself (Aicardi, 1997).

As regards, however, the substitutive agreements, replacing the administrative measure, intervened between the public administration and the private, Law no. 15 of 2005 exceeded the previous version of the regulatory text that sanctioned the typicality of the same through the expunction of the phrase „in the cases provided for by law".

Specifically, Law no. 15 of 2005 takes up the elaboration prepared by the Nigro Commission and reduces the differences between the two types of agreements by ascribing them in a single category (Cons. St., Ad. gen., 19 febbraio 1987, n. 7, in *Foro it*., 1988, III, c. 34).

The anti-corruption law (law no. 190 of 2012) introduced a series of important changes to the discipline of supplementary or substitutive agreements of the provision and with art. 1, paragraph 47, added to paragraph 2 of art. 11, l. n. 241 of 1990, the obligation to state reasons.

In particular, such agreements must state the reasons on which they are based, indicating the factual conditions and the legal reasons which led to the administration's decision, in relation to the findings of the investigation (Zito & Tinelli, 2017).

The rationale of the aforementioned provision is to counter illegality by ensuring that the activity of the public administration is inspired by criteria of impartiality, as enshrined in both art. 97 cost., both by art. 11, l. n. 241 of 1990.

However, the consensual instrument is subject to limitations for substantial and formal reasons: the same art. 13, l. n. 241 of 1990, excludes the applicability of the agreements to the administrative activity aimed at the adoption of general regulatory, administrative, planning and programming acts (Cons. St., Sez. IV, 10 dicembre 2007, n. 6344, *www.giustizia-amministrativa.it.*).

Finally, this does not prevent pursuant to the same provision of art. 13, paragraph 1, according to which, in such cases, „the particular rules governing their formation remain unaffected" that specific disciplines may provide for the application of conventional modules in these areas, such as, by way of example, with regard to subdivision conventions in urban planning matters, conventions for the public usability of cultural heritage and conventions for the enhancement of cultural heritage (Fantini, 2014).

9. CULTURAL HERITAGE BETWEEN PROGRAM AGREEMENTS, MEMORANDA OF UNDERSTANDING AND CONVENTIONS FOR ENHANCEMENT

In the field of cultural heritage, the administration by agreements has found wide diffusion as it represents a practical relevance and is a transversal topic ranging from administrative law to private law.

The different possibilities of public-private collaboration in the field of cultural heritage find expression in the increasingly numerous practical experiences that are developing also through program agreements and memoranda of understanding.

The agreement between the Ministry of Cultural Heritage and local authorities and between the latter and private individuals represents one of the last applications, known in the field of cultural heritage, of that specific consensual form constituted by the program agreement. In particular, art. 112 outlined a new system of consultation, divided into three distinct phases or moments: strategic, „specific programming" or planning, and management or implementation, through which the State, Regions and local authorities can stipulate, on a regional and / or infra-regional basis, agreements to define strategies and common objectives of enhancement (so-called strategic phase) and to elaborate the consequent strategic and cultural development plans and programs (phase of specific programming), also promoting the integration, in the agreed valorisation process, of infrastructures and related production sectors.

Several Regions have stipulated agreements and agreements on cultural heritage with the Ministry, implementing forms of interinstitutional and socio-economic cooperation for so-called „development" purposes, with an opening to both local authorities and private individuals, creating a regulation agreed between public entities or between the competent public entity and private parties for the implementation of different interventions to through the definition of common strategies and objectives for the enhancement of cultural heritage present in certain territories, as well as to develop strategic plans for cultural development.

The memorandum of understanding is also an instrument with which the State, the Regions and the local autonomies with the participation of private subjects, reach agreements in order to carry out conservation and enhancement interventions concerning assets ascribed to the cultural heritage and present on the regional territory.

The agreement is aimed at coordinating conservation and enhancement interventions on cultural heritage to ensure a balanced and profitable use of the overall resources available in the sector.

With the Memorandum of Understanding, the Contracting Parties regulate relations within a coordinated framework of interinstitutional relations, taking into account the coincidence of the objective areas of intervention, so as to promote shared interventions concerning important goods or places of culture which, by reason of their historical, artistic, architectural and cultural value, present significant opportunities for enhancement and development of fruition.

The memorandum of understanding responds to criteria of economic management and efficiency and effectiveness of administrative action, also in consideration of the limited resources of the public part available for the performance of the institutional tasks that the State, Region and local authorities must ensure and support pursuant to Article 1, paragraph 3, of the Code of Cultural Heritage.

In addition, the other consensual instruments cannot be overlooked the enhancement conventions aimed at guaranteeing the public usability of the asset, the latter elaborated on the basis of what has happened in urban planning and which allow to fully realize the synthesis of public and private interests for the best enhancement of the cultural asset.

Precisely in order to understand the application ratio of the aforementioned enhancement conventions, it is appropriate to move from the principle of consensuality in the government of the territory, so-called „consensual urban planning", to arrive at the analysis of urban planning conventions as a general model on which to lower the conventions of enhancement of cultural heritage (TAR Basilicata-Potenza, 6 febbraio 2018, n. 106).

10.CONVENTIONS FOR THE ENHANCEMENT OF PRIVATE CULTURAL HERITAGE

The conventions, in addition to being applied in the field of subdivision just l. n. 765 of 1967, are used, in terms of enhancement of cultural heritage of private belonging, as substitutive agreements of the provision, pursuant to art. 11 l. n. 241 of 1990, aimed at combining interests of which the public administration and private individuals are the bearers (Sulli, 2000).

Administrative conventions and agreements represent an Italian legal typology, which has spread in international legal systems, where the administration is placed in an equiordinate position and not of supremacy over the counterparty.

Therefore, urban planning conventions as well as those of enhancement are an expression of the new conception of administering by agreements and are subject to the discipline referred to in art. 11 l. n. 241 of 1990, and the particular regulation sanctioned between the parties to regulate the relations between the parties.

The question under examination - with the entry into force of the law on administrative procedure - is to establish whether art. 11 is applicable to subdivision conventions and, therefore, to conventions for the enhancement of cultural heritage, this precisely because art. Article 13 establishes the inapplicability of the aforementioned rules ,with regard to the activity of the public administration aimed at issuing regulatory, general administrative, planning and programming acts, for which the particular rules governing their formation remain unaffected' (Parente, 2006).

In fact, in urban planning conventions, both the profiles relating to individual rights and the profiles relating to spatial planning coexist, with regard to which the specific recourse to consensual and non-authoritative activity allows to combine the opposing interests.

Despite the usual jurisprudential conflict, these conventions are defined as acts of a civil nature, to which the rules of the code subject to certain derogations apply.

In particular, for the purposes of the applicability of civil principles, the jurisprudence has considered that the private individual, in the presence of a subdivision agreement modified by the master plan, can act *pursuant* to Article 1453 of the .c., which provides for termination for non-fulfilment, and recognizes to the p.a. to be able to resort to executive self-protection.

Therefore, the private individual, who has suffered a prejudice to his subjective position, may in the event of failure of the administration have recourse to the remedy referred to in art. 2932 c.c.

However, in the present case, action may be taken by recourse to protective instruments other than private ones, such as those of a public nature, among which there may be a request for the appointment of the commissioner *ad* acta (Verna, 2006).

For the reasons set out, urban planning agreements cannot be defined unequivocally for the purposes of qualification, although through the interpretation of the law on administrative procedure the theory of the so-called public object contract has been formulated (Massa, 2013).

Thus, the subdivision agreements and similarly the conventions for the enhancement of cultural goods, can be outlined as contracts peculiar by nature that are part of the administrative procedure, resulting in a degradation of subjective rights to legitimate interests, if the administration adopts the authoritative power, following the arrival of reasons of public interest (Massa, 2013).

In any case, the aforementioned urban planning conventions tend to be traced back to the agreements referred to in art. 11, which provides that for reasons of public interest the p.a. may withdraw from the contract; withdrawal that is not outlined and known by the Civil Code as a cause for termination of the contract itself.

The public administration through the use of conventions must pursue the public interest to which it is institutionally responsible.

Precisely with reference to the present case, the jurisprudence, although it has brought the dogmatic framework back to the private case, has considered that the urban planning convention is subsumed in the procedural context in which the adoption of the building permit by the public administration expresses the authoritative power, and can determine the sacrifice of the subjective position claimed by the private individual.

As for the civil contract, even in the public sector, the agreement between the public administration and the private sector cannot pursue purposes prohibited by law, indeed the public administration through the exercise of its discretionary power can achieve the desired result, in compliance with the institutional purpose.

The relationship that arises from the agreement consists of a mandatory part essential to the realization of the intervention on the asset and an optional part defined by the contractors *pursuant* to art. 1322 c.c.

The reasoning is applicable both to subdivision agreements and to agreements between private individuals and public administration, aimed at enhancing the cultural heritage of private belonging.

With the stipulation of the agreement, the parties delimit the specific obligations, in an area where the meeting of the wills - consecrated in a written pact - is an expression of the civil canons of correctness and good faith, which finds its natural addentellati in art. 97 cost., with regard to the principles of impartiality and good performance, which inform the administrative action.

11.CASE STUDIES AND CONCLUSIONS

An emblematic case of enhancement agreement aimed at public usability concerns the aforementioned case of Villa Pignatelli, which has allowed the owners, expected the unsustainable and huge costs of conservation and restoration, to continue to live in a part of the Villa and benefit from state funding, having to guarantee, at the same time, the opening to the public for the usability of the frescoes (Barbati et al., 2017).

The enhancement agreement responds to the univocal logic: to put or bring back into the availability of the public artistic and cultural goods, the use of which was not possible or was limited exclusively to professionals.

However, in cases where it is impossible to proceed with the stipulation of enhancement agreements, the procedural process follows the administrative path, up to the *extrema ratio* of the expropriation of the cultural asset.

In this regard, the case of the Pontrelli Quarry of Altamura is emblematic, in which, following the constraint affixed by the Ministry of Cultural Heritage on the entire area concerned, the company that owns the site was available to recognize the right of passage to the Superintendence, the Municipality and the Universities, but not to the stipulation of agreements for the enhancement for the purposes of public usability.

Since the discovery, the Superintendence has started negotiations with the owner in order to coordinate forms of management aimed at the realization of projects to enhance the same site; however, since the fund is interlocked, with difficulty of access, the need for an easement of passage immediately emerged.

The negotiations conducted between the Ministry, the Municipality of Altamura and private property, aimed at entering into agreements, in order to guarantee the public usability of the site have not been successful and the extreme solution of the expropriation of the Dinosaur quarry has been reached (Simonati, 2016).

The expropriation of cultural heritage is the final stage of the lack of enhancement that can be advanced by the Ministry only after a fair balancing of the interests at stake, not without having evaluated the possibility of resorting to other organizational tools; therefore, the compulsory transfer of ownership of the asset takes place where the consensual instruments have not had effect and provided that the same constitutes an essential, indispensable and infungible condition for an improvement in the conditions of protection of the asset for the purposes of use.

In particular, the enhancement activity is carried out „in the establishment and permanent organization of resources, structures or networks, or in the provision of technical skills or financial or instrumental resources" (Article 111 of the Italian Civil Code.b.c.), on the initiative of the private sector, including all the activities and structures for the enhancement of privately owned cultural heritage, which benefit from public support from the State, of the regions and other local public bodies according to the relevance of the assets concerned (art. 113 c.b.c.).

However, due to the limited availability of financial resources, cultural heritage policies have shifted towards entrepreneurial management of cultural heritage, also with a view to greater cooperation between the public and private sectors.

In fact, in addition to the public interest, a series of interests deserving of protection on cultural heritage are involved, including: the collective interest of citizens in the fruition, the interest of the private owner of a cultural asset, the interests of private financiers, whose participation can take on peculiar forms, such as additional services, sponsorships, liberal disbursements.

The public body participates in the management and enhancement of private cultural heritage through agreements for public usability and multiple consensual tools (collaboration agreements, negotiated programming, memoranda of understanding, organizational and program agreements, etc.), aimed at allowing the private, owner of the asset, to access public subsidies for the activities of rehabilitation of the cultural asset (Barbati, 2009).

Eloquent, in this regard, is the aforementioned case of Villa Pignatelli in Naples, in which public and private interests have been harmonized through an enhancement agreement for public usability, allowing, on the one hand, the owners to carry out conservation and restoration activities that they could not have supported due to the huge costs and, on the other, to guarantee the opening to the public, thus ensuring the usability of the asset.

In this case, the consultation between the administration and private owners of the cultural property has allowed the full pursuit of the public interest together with the private interest: indeed, on the one hand, the Ministry for Cultural Heritage through the enhancement agreement for the purposes of public usability of the asset has allowed the private to access the financing that it could hardly have found without public intervention; on the other hand, to the State to guarantee the community the fruition of the cultural asset of private belonging.

Otherwise, in the case of the so-called Dinosaur quarry, in the province of Bari, the Superintendence for Archaeological Heritage has *reached the extrema ratio* of expropriation.

Furthermore, the story of the Teatro Petruzzelli in Bari, a company of public importance and cultural property of private property, devastated by a fire in 1991, arouses interest.

In the present case, the enhancement agreement (so-called Protocol), signed in 2002 by the Ministry of Cultural Heritage and local authorities with the owners of the Theatre, was intended to ensure the exclusive management of artistic activities in the functioning theatre to the Fondazione Lirico Sinfonica, which was established with the aim of participating in the management of some Bari theatres including Petruzzelli and to do so the local authorities undertook to complete the necessary works aimed at the reconstruction of the theater, as indicated in the project drawn up by the superintendence, while the private parties were obliged to sell the entire property within ninety days of the request by the Foundation, for the realization of the aforementioned works without any impediment. The protocol also made explicit reference to the granting of the trademark by providing for the Foundation to grant the exclusive use of the theater together with the exclusive use of the trademark for any activity compatible with the tradition and prestige of the theater upon payment to the owners of an indemnity by the foundation.

It is evident that the aforementioned protocol has guaranteed the public usability of the asset and justified the use of public funds available as a result of Law no. 444 of 1998 and the allocation of the residual funds necessary for the restoration and functional recovery of the Theater, thus regulating the use of the company and the privately owned trademark and taking into account the necessary protection of these asset profiles.

The cases mentioned show that the lack of consensual enhancement causes harm both to the owner, who risks being expropriated of the asset, and to the State, which will have to proceed with the expropriation and identification of the most appropriate tools of enhancement through a considerable expenditure of public money and time.

If, on the other hand, there is recourse to concerted activities between public and private, antagonistic interests can be reconciled and the public purpose can be pursued with undoubtedly shorter times and costs.

Among the objectives pursued by the protocols, there is that of regulating the institutional relations between the subjects in a harmonious structure, identifying coincident areas of intervention.

Indeed, the Ministry is called upon to evaluate the proposal for an enhancement agreement and decide with the sole canon of judgment of the maximization of the care of the public interest (protection and enhancement of the cultural asset) whether for the correct protection and management of the asset the best solution is actually constituted by the stipulation of the agreement, having regard to the size and relevance of the specific cultural asset, if of local or supralocal and / or national interest, in order to find a way to ensure the most profitable protection and public enjoyment of the assets.

The so-called agreement promotes concerted interventions regarding cultural heritage and places that, due to their historical or architectural value, constitute an opportunity for enhancement and development for the purpose of fruition.

The parties, therefore, pursue good practices for the preservation of historical memory, also through innovative management, aimed at the enhancement and use of the asset through suitable organizational modules, which combine the various activities, thus ensuring a unitary and timely action, which defines the real estate and furniture, the areas subject to related interventions, the resources essential for the intervention and how to find them, the elaboration of intervention and planning programs with the indication of the timing.

REFERENCE LIST

Aicardi, N. (1997). La disciplina generale e i principi degli accordi amministrativi: fondamento e caratteri. *Rivista trimestrale di diritto pubblico, 1*, pp. 1–59.

Aicardi, N. (2002). *L'ordinamento amministrativo dei beni culturali. La sussidiarietà nella tutela e nella valorizzazione*. Torino: Giappichelli.

Albisinni, F. G. (2016). I contratti pubblici concernenti i beni culturali. *Giornale di diritto amministrativo, 4,* pp. 510-515.

Astone, F., Manganaro, F., Rolli, R. & Saitta, F. (2018). *I beni pubblici tra titolarità e funzioni*, pp. 57 75, Milano: Giuffrè

Federico, A. (2015). L'uso giurisprudenziale della causa concreta. In G. Perlingieri, G. Clarizia, O. Lepore & A. Fachechi (eds.). *La giurisprudenza del foro napoletano e gli orientamenti nazionali ed europei in tema di obbligazioni e contratti,* pp. 25-37, Napoli: Edizioni Scientifiche Italiane.

Barbati, C., Cammelli, M., Casini, L., Piperata, G. & Sciullo, G. (2017). *Diritto del patrimonio culturale*, pp. 191-205, Bologna: Il Mulino.

Barbati, C. (2009). Governo del territorio, beni culturali e autonomie: luci ed ombre di un rapporto. *Aedon Rivista di arti e diritto online, 2. http://www.aedon.mulino.it/archivio/2009/2/barbati.htm.*

Battelli, E. (2017). I soggetti privati e la valorizzazione del patrimonio culturale. In E. Battelli, B. Cortese, A. Gemma, A. Massaro (eds.). *Patrimonio culturale. Profili giuridici e tecniche di tutela* (pp. 53–91). Roma: Università degli Studi Roma Tre.

Benedetti, A. M. (2012). Contratto asimmetrico. *Enciclopedia del diritto. Annali*, V, 354–364.

Bruti Liberati, E. (2001). Accordi pubblici. *Enciclopedia del diritto. Aggiornamento,* 5, 28–32.

Buzzanca, A. (2019). *La valorizzazione dei beni culturali di appartenenza privata*. Napoli: Edizioni Scientifiche Italiane.

Cangelli, F. (2000). Riflessioni sul potere discrezionale della pubblica amministrazione negli accordi con i privati. *Diritto Amministrativo*, *2*, 277–340.

Carpentieri, P. (2010). La gestione dei beni culturali e la finanza di progetto. In G. F. Cartei, M. Ricchi (eds.), *Finanza di progetto, temi e prospettive*, 33 (pp. 15–20). Napoli: Edizioni Scientifiche Italiane.

Casini, L. (2017). Quale futuro per il diritto globale del patrimonio culturale? *Giornale di diritto amministrativo*, 3, 285–298.

Calderoni, G. (2016). I patti di collaborazione: (doppia) cornice giuridica. *Aedon Rivista di arti e diritto online*, 2. http://www.aedon.mulino.it/archivio/2016/2/calderoni.htm

Capriotti, P. (2017). Per un approccio integrato del patrimonio culturale. *Aedon Rivista di arti e diritto online, 1*. http://www.aedon.mulino.it/archivio/2017/1/capriotti.htm

Caringella, F. (2021). *Manuale di diritto amministrativo*. Roma: Dike.

Cerulli Irelli, V. (2005). *Osservazioni generali sulla legge di modifica della l. n. 241/1990, II parte*. www.giustamm.it.

Chinè, G., Fratini, M. & Zoppini, A. (2018). *Manuale di diritto civile*. Molfetta: Nel Diritto.

Chiti, M. P., Greco, G. (2017). *Trattato di diritto amministrativo europeo*. Milano: Giuffrè.

Clarich, M. (2016). Contratti pubblici e concorrenza. In *La nuova disciplina dei contratti pubblici tra esigenze di semplificazione, rilancio dell'economia e contrasto alla corruzione, Atti del LXI Convegno di studi di Scienza dell'amministrazione, Varenna, 17-19 settembre 2015* (pp. 263–267). Milano: Giuffrè.

Costantino, M. (1982). *Trattato di diritto privato. Rescigno*. Torino: Giappichelli.

De Donno, M. (2018). *Nuove prospettive del principio di consensualità nell'azione amministrativa: gli accordi normativi tra p.a. e privati*. https://www.astrid-online.it/static/upload/de-d/de-donno_federalismi_6_2018.pdf

Di Camillo, F. (2005). *Legge n. 15/2005: l'amministrazione partecipata tra conferme e nuove prospettive*. https://www.diritto.it/articoli/amministrativo/di_camillo1.pdf

Dugato, M. (1996). *Atipicità e funzionalizzazione nell'attività amministrativa per contratti*. Milano: Giuffrè.

Fantini, S. (2014) Beni culturali e valorizzazione della componente immateriale. *Aedon Rivista di arti e diritto online*, 1. http://www.aedon.mulino.it/archivio/2014/1/fantini.htm

Ferrara, R. (1997). La pubblica amministrazione tra autorità e consenso: dalla specialità amministrativa a un diritto amministrativo di garanzia? *Diritto Amministrativo*, 2. 226–228.

Fracchia, F. (1998). *L'accordo sostitutivo. Studio del consenso disciplinato dal diritto amministrativo in funzione sostitutiva rispetto agli strumenti unilaterali di esercizio del potere*. Padova: Cedam.

Frigo, M. (2010). *Il Codice dei beni culturali: aspetti di diritto internazionale e comunitario*. In G. Alpa, G. Conte, V. Di Gregorio, A. Fusaro & U. Perfetti (eds.), *I beni culturali nel diritto. Problemi e prospettive*. Napoli: Edizioni Scientifiche Italiane

Greco, G. (2004). *Accordi amministrativi tra provvedimento e contratto*. Torino: Giappichelli.

Mabellini, S. (2016). *La tutela dei beni culturali nel costituzionalismo multilivello*. Torino: Giappichelli.

Manganaro, F. (2006). Nuove questioni sulla natura giuridica delle convenzioni urbanistiche. *Urbanistica e appalti*, 337–340.

Massa, N. (2013). L'azione ex art. 2932 c.c. davanti il g.a.: lo sviluppo dopo alla Adunanza Plenaria 28/2012. Gli orientamenti della giurisprudenza e della dottrina. *Rivista scientifica trimestrale di diritto,* 5. http://www.amministrativamente.com/index.php/formez/article/view/10092

Mastragostino, F. (2011). *La collaborazione pubblico-privato e l'ordinamento amministrativo. Dinamiche e modelli di partenariato in base alle recenti riforme*. Torino: Giappichelli.

Mastropietro, B. (2016). *Trascrizione di atti costitutivi di vincolo*, Art. 2645-*quater*. Milano: Giuffrè.

Mastropietro, B. (2012). *L'attività contratto della P.A. tra buona fede e interesse pubblico*. Corr. giur., 2012, pp. 1498-1525, spec. 1500

Mengoli, V. (2003). *Gli accordi amministrativi tra privati e pubbliche amministrazioni*. Milano: Giuffrè.

Michiara, F. (2016). *I patti di collaborazione e il regolamento per la cura e la rigenerazione dei beni comuni urbani. L'esperienza di Bologna*. http://www.aedon.mulino.it/archivio/2016/2/michiara.htm

Morea, R. (2008). *Gli accordi amministrativi tra «norme di diritto privato» e principi italo-comunitari*. Napoli: Edizioni Scientifiche Italiane.

Paolantonio, N. (2003). Autoregolamentazione consensuale e garanzie giurisdizionali. In *Cons. Stato - 2000*, II, 795–1000.

Parente, F. (2006) *I moduli consensuali di pianificazione del territorio e la tutela degli interessi differenziati*. Napoli: Edizioni Scientifiche Italiane.

Pennasilico, M. (2012). *La «pianificazione per accordi» tra ambiente e mercato. Scritti in onore di Lelio Barbiera*. Napoli: Edizioni Scientifiche Italiane.

Pennasilico, M. (2015). *Contratto e interpretazione. Lineamenti di ermeneutica contrattuale*. Torino: Giappichelli.

Piperata, G. (2004). La valorizzazione dei beni culturali di proprietà privata (art. 113). *Aedon Rivista di arti e diritto online,* 1. http://www.aedon.mulino.it/archivio/2004/1/art113.htm

Piraino, S. (2008). La consensualità nell'azione amministrativo. *Rivista di diritto dell'economia, dei trasporti e dell' ambiente, n. 6*, 510–520.

Plaisant, A. (2018). *Dal diritto civile al diritto amministrativo*, 3 ed. Udine.

Ricciuto, V. & Nervi, A., (2009). Il contratto della pubblica amministrazione. In *Tratt. dir. civ. CNN*, diretto da P. Perlingieri. Napoli: Edizioni Scientifiche Italiane.

Sciullo, G. (2017). I beni culturali quali risorsa collettiva da tutelare. Una spesa, un investimento. *Aedon Rivista di arti e diritto online, 3.* http://www.aedon.mulino.it/archivio/2017/3/sciullo.htm

Severini, G. (2016). Tutela del patrimonio culturale, discrezionalità tecnica e principio di proporzionalità. *Aedon Rivista di arti e diritto online, 3.* http://www.aedon.mulino.it/archivio/2016/3/severini.htm

Severini, G. (2015). Il patrimonio culturale e il concorso dei privati alla sua valorizzazione. Rivista giuridica dell´edilizia, 2, 323–334.

Simonati, A. (2016). La partecipazione dei privati al governo del territorio nella legislazione regionale tra tradizione e sperimentazione, per una nuova urbanistica reticolare. *Rivista giuridica dell'edililizia.*, 3, 267–283.

Stella Richter, P., Scotti, E., (2002). Lo statuto dei beni culturali tra conservazione e valorizzazione. In A. Catelani & S. Cattaneo (eds.), *I beni e le attività culturali*. *Trattato di diritto amministrativo* (pp. 413-425). Padova: Santaniello.

Rodotà, S. (2013). *Il terribile diritto. Studi sulla proprietà privata e i beni comuni*, 3rd ed. Bologna: Il Mulino.

Simone, S. G. (2012). Il ruolo dell'autonomia privata nell'urbanistica contrattata. In M. Pennasilico (ed.), *Scritti in onore di Lelio Barbiera* (pp. 1411–1427). Napoli: Edizioni Scientifiche Italiane.

Sulli, R. (2000). Le convenzioni per la valorizzazione dei beni culturali. http://www.aedon.mulino.it/archivio/2000/1/sulli.htm

Verna, P. (3. 2. 2018). *La convenzione urbanistica è un contratto: niente modifiche unilaterali da parte del comune*. https://ntplusentilocaliedilizia.ilsole24ore.com/art/la-convenzione-urbanistica-e-contratto-niente-modifiche-unilaterali-parte-comune-AELAEfQE?refresh_ce=1

Zanetti, L. (2004). La valorizzazione dei beni culturali di appartenenza pubblica (art. 112). *Aedon Rivista di arti e diritto online*, *1.* http://www.aedon.mulino.it/archivio/2004/1/art112.htm

Zito, A., Tinelli, G. (2017). L'ambito di applicazione delle norme sulla partecipazione. In M. A. Sandulli (ed.), *Codice dell'azione amministrativo* (pp. 681–687). Milano: Giuffrè.