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Illegal and “Legal” Spatial Blight: the Ecomostri

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ABSTRACT

The paper analyses the illegal and legal spatial blight, linked by abuse and disfigurement of the surrounding buildings, seen as wrong planning and balanced land use, wear disguise tourism, which only serve to justify and make winning the project and obtain the law permits. The pathology of urbanization without criteria or measures, connected to unspecified reasons tourism, which retain only the meaning of terminology has led the Italian news in some respects and the case for others to deal with those now commonly and sadly are known as *ecomostri* (eye-sores) .

An effective tourism policy can be a powerful lever for sustainable development, or even a tool for sustainable tourism landscape transformed into a landscape of decay.

Keyword:

Space

Illegal Blight

Legal Blight

Ecomostro

Introduction

The theme of the conference, focused on the analysis of concepts such as the protection, enhancement and enjoyment of the natural beauty of an area, immediately raises a substantial question of order, namely the identification of effective tools, capable to ensure the result¹, the target we arise.

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¹ There are limits here, to recall a known definition for the Administration of result as a new model of administrative management and organization oriented to achieve the result, which sees the positive trend, its core principle. With it, guaranteed in the constitution “integrates the traditional criterion of administrative functions, such discretion impartially, with that of discretion efficient.. The law remains

As saying that the natural heritage inevitably requires effective regulatory actions that might accomplish what becomes a benefit performance by the various governments involved, namely the respect for these assets, their protection and implementation of these functions through a correct use the assets in question.

Point of departure can not be merely the framework law on protected areas², which at the beginning, states that <<the present law, in implementation of Articles 9 and 32 of the Constitution and in compliance with international agreements, such basic principles for establishment and management of protected natural areas, to ensure and promote, in a coordinated conservation and enhancement of the natural heritage of the town>>.

However, legal instruments that want to just try to realize this demanding task must necessarily take into account the various factual components and, consequently, different policies for action. This is because the object is not a treaty concerning the boundaries narrow and well defined, but rather touches many interests, each of which has a specific framework of reference that can not be neglected.

Space, Landscape, Environment

In particular to the concepts of territory, landscape, environment and for the purposes of enjoyment, the significance of tourism, terms that contain within themselves the concepts and definitions are not always clear interpretation, but also that they require, often, a glance with and involvement of different branches of law in order to outline a complete and effective "policy" of territorial governance understood in everyday language. Indeed, components such as planning, urban planning, land use are unailing for proper articulation of the field investigation.

The problem, if anything, is to delineate clearly the boundaries over the other, to outline the relationship between territory and landscape³, or between the environment and urban development, taking into account that today, it is further decomposed planning in one hand and the territorial government, on the other⁴.

Moreover, in literature⁵ and even in case⁶ the territory is considered as a transversal element on which emphasize different components, some of which often has a specific rule dealing with diverse interests, such as underlined recently by the Constitutional Court < < those concerning environmental conservation and landscape. ... and those concerning the

the parameter of efficiency, but the result>>. CALANDRA, *Il buon andamento dell'amministrazione pubblica*, in AA. VV, *Studi in memoria di Vittorio Bachelet*, Milano, 1987, I, p. 157. Sul tema v. anche: CAMMELLI, *Amministrazione di risultato*, in Astrid.

² This is law 1991/12/6, n. 394, art. 1.

³ There is today, who admits the existence of a landscape without the territorial element, cf. SGARBI - Mazzotta, *Paesaggio senza territorio*, Milano, 1986.

⁴ DUGATO, in his lecture *Urbanistica e governo del territorio: il ruolo degli enti locali, tenutasi at the tutorial Governo del territorio e autonomie territoriali*, presso la Spisa, il 28 febbraio 2009. He recovers, citing SALZANO, *Fondamenti di urbanistica. La storia e la norma*, Bari, 2007, the specificity of urbanism in attention to the converted, the urbanized, while the non-urbanized does not extend the territorial government, but planning.

⁵ Cfr. Sciuillo, *Il paesaggio tra la Convenzione e il Codice*, in *Riv. Giur. Urb.*, nn.1-2, 2009, pp. 44 ss.; Marzaro, *Paesaggio e autonomie territoriali*, Relazione tenuta al Convegno *L'esperienza della pianificazione territoriale regionale: paesaggio e territorio a confronto*, tenutosi a Padova il 5 giugno 2009; Pedrieri, *Paesaggio*, in *Enc. Dir.*, Milano, 1981, vol. XXXI, pp. 503 ss.; Immordino, *Paesaggio (tutela del)*, in *Dig. Disc. Pubbl.*, Torino, 1995, vol. X, pp. 573 ss; Cortese, *I beni culturali e ambientali : profili normativi*, Padova, 2002; M. A. Sandulli, *Codice dei beni culturali e del paesaggio (diretto da)*, Milano, 2006, Boscolo, *La nozione giuridica di paesaggio identitario ed il paesaggio 'a strati'*, in *Riv. Giur. Urb.* nn. 1-2 del 2009, pp. 57 ss.

⁶ Corte Cost. 2008/5/30, n. 180 in www.federalismi.it.

territorial government and the enhancement of cultural and environmental⁷>>. Therefore, prior to any consideration of the subject is the realization that if the descriptive point of view it is undeniable that when referring to the landscape, necessarily mean the territory and therefore it has to do with the environment el ' urbanism, that what matters is legal <<selection of interests, their comparison and identification of where the grant rule, according to a court rule that tends to the synthesis and isolation of the nuclei of interest and values, although in reality Unitarianism natural sciences, emerge and stand out as deserving of special consideration and appropriate safeguard⁸>> .

In the literature, it has been much discussion on the notions of landscape, environment, urban planning and territory, as independent factors normatively hours of each other, now closely linked and connected with a view to reaching a full understanding what the most effective synergies achieve the creation of a sustainable development policy. In particular, Law No 394 of 1991 already provided for the possibility, in protected natural areas, promote development and testing of production activities are compatible. The rationale of the legislation just cited is to ensure a state intervention concerning the conservation of natural areas protected by finalizing this function to the enjoyment of natural heritage to future generations. However, this becomes possible without neglecting the economic needs physiologically related to the development of a territory, but include as factors to take into consideration the reasons social, cultural, environmental, inherent in it. Therefore, even if the 1991 Act does not have a vision of "network system⁹", as then happen, for example, the European Convention on sustainable tourism in protected areas, it does not already conceived more as a protected area detached from reality social context in which it appears¹⁰. This involves a step further, able to make to tourism, or rather to tourism policy, a substantial jump, to more than binomial friendly tourism and the need to reach the idea of sustainable tourism.

This assumption is also endorsed by the Constitutional Court that comes to protecting the environment by virtue of constitutional precepts, namely Articles. 9:32 Constitution as a primary value and absolute, and therefore it <<is protected as an element determining the quality of life. Its protection is not pursuing abstract or naturalistic aesthetic purposes, but expressed the need for a natural habitat in which man lives and acts and that it is necessary to the community and for it to nationals, according to values widely felt¹¹>>. Even the European Landscape Convention Notes¹²<<that developments in techniques of agricultural production, forestry, industrial and mine planning and practice in spatial planning, urban design, transport networks, tourism and recreation and, more generally, economic changes world are in many cases accelerating the transformation of landscapes>> unavoidably linking all factors and interests involved for a real protection of the sectors involved.

⁷ These different types or 'layers' interests are different dimensional levels, even after the reform of Title V of the Constitution, but must be guided by the principle of cooperation, in the exercise of administrative functions. . Cfr. Amorosino, *La governance e la tutela del paesaggio tra Stato e Regioni dopo il secondo decreto correttivo del Codice dei beni culturali e del paesaggio*, in *Riv. Giur. Urb.* nn. 1-2 del 2009, pp. 99 ss. Already the Law 394 of 1991 provided that <<the protection and management of protected natural areas, the State, regions and local authorities implement cooperation and understanding>>.

⁸ So CARPENTIERI, *La nozione giuridica del paesaggio*, in *Riv. Trim. dir. Pubbl.*, 2004, pp. 363 ss.

⁹ Desideri, *Aree protette e tutela della natura; nuovi modelli legislativi*, in *Ambiente*, 1998, n. 5, p. 397 ss.

¹⁰ Imparato, *Il turismo nelle aree naturali protette:dalla compatibilità alla sostenibilità*, in *Riv. Giur. Amb.*, 2008, p. 333.

¹¹ C. Cost. 1987/12/30, n. 641.

¹² European Landscape Convention of 20 October 2000, ratified by Italy by Law 9 January 2006, No 14.

Tourism between environment and landscape

In this context, the item becomes a tourist some added value unavoidable, because through its many facets can exploit the territory on which affect or become more sinister expression of speculative action aimed at all round.

The European Charter of "sustainable tourism, defined as" any form of development, planning or tourism that respects and preserves long-term natural resources, cultural and social and contribute in a fair and positive economic development and full realization of people living, working or staying in protected areas ", states clearly that <<is a priority that tourism protects the assets on which it bases its activities>>. In this way, the goal to attain is not only the realization of action for the environment and territory, which serves to influence in order to make tourism compatible, but the implementation of a tourism policy that becomes achieve a result that is capable of being translated into procedures and management processes that come to the creation of sustainable tourism¹³. However, the implementation of a well developed tourism needs an overall review, concert, and a strengthening of all positive interactions between the tourism and other sectors of the territory.

Tourism, in fact, contains many interests, be classified for example, in the economic development of a territory in its expansion through a balanced use of the same, made of different landscapes, from the daily degradation that most concerns us in this home. In fact, often, abuse and disfigurement of the surrounding buildings, seen not only as an ecosystem, but also as wrong planning and balanced land use, wear disguise tourism, which only serve to justify and make winning the project and obtain the law permits.

Hotel Fuenti (SA)



(www.architetturaecosostenibile.it)

¹³ Cfr. Imparato, *Il turismo nelle aree naturali protette:op. cit*, p. 349.

The pathology of urbanization without criteria or measures, connected to unspecified reasons tourism, which retain only the meaning of terminology has led the Italian news in some respects and the case for others to deal with those now commonly and sadly are known as *ecomostri* (eyesores) . With this definition must be understood the building or complex of buildings seriously considered incompatible with the surrounding natural environment.

It may be that the construction of *ecomostri* under conditions of unfairness, and therefore this structure must be demolished in accordance with the law or simply that the original project is not completed, resulting in disfigurement which was in harmony with the environment

In some cases, the non-completeness of the work, which often included a tourist destination, resulting in a distortion of the essence of the structure, creating a stark contrast with the natural beauty of the place, which in some cases, especially for the typical landscape of places worthy of protection, would require, however, increased land conservation actions and and the prevention of further deterioration of shares.

What I want to draw attention here is the interconnection of sectors such as tourism, environment and landscape.

Moreover, even the aforementioned European Convention, although not express reference to tourism, states that the <<Landscape designate a certain portion of territory, as perceived by people, whose character derives from the natural and / or humans and their interrelationships>> with an indirect reference to the undeniable profiles just highlighted. Clear at this point is to argue that action or rather a tourism policy attentive to and respectful of environmental planning and policy landscape¹⁴ is certainly capable of giving good results in terms of recovery, rehabilitation and enhancement of natural beauty in the territory. It could explain the relationship between territory, tourism and environment as a complex relationship, because it can take different forms and dynamic, as these forms can change and transform over time¹⁵.

In particular, the three policies at issue between them may be in a relationship of coexistence between them if you establish a peaceful coexistence, based on the integration and coordination, conferring benefits in three areas of reference, or give rise to a conflict where the first two causes damage to the ecosystem or for that matter to us, more specifically, to the natural heritage.

In any event, tourism can convey the environment and rationalize urban planning in the area, as effective as claimed by Peter Johnson and Barry Thomas <<tourism put an area on the map>>.

So if tourism can draw attention to the landscape and surrounding environment, it is then necessary synergy between these areas and their operators to achieve an effective policy intervention on the territory once the promotion, protection and promotion thereof. And it is precisely because of what was stated above that becomes steadfast promotion of tourism that are increasingly not only compatible but also to sustainability, with consequent involvement and cooperation of all stakeholders in order to achieve the creation of planning <<process-oriented programming to create a development that meet the needs of present generations without compromising the ability of future generations to meet their¹⁶>>.

This account must be added another. A 'policy' of the territorial government also has among its objectives the economic development of the same objective, which also tends to even the 'tourism policy'. Consequently it follows the extreme importance of the role given to that

¹⁴ The phrase is contained in the European Landscape Convention, Art. 1, read. b).

¹⁵ cfr. Candela–Castellani, *Il turismo sotto la tutela dello Stato*, in *Evoluzione e prospettive della legislazione sul turismo*, Gola (a cura di), Repubblica San Marino, 2002, pp. 122 ss

¹⁶ So again the European Charter for sustainable tourism in protected areas, introduction.

effect, local authorities, based on indications and guidelines outlined in the various regional plans¹⁷.

As saying that the strengthening of local government, seen as the sphere of government is essential to sustainable development is essential to increase economic and political forms of local dimensions that have the objective of enhancing the local identity¹⁸.

In the light of these statutory provisions that should be read in the relationship between economic development and environmental protection, with particular attention to the area and specifically to the local where you play the card of quality of life and beauty of the area. Convergent with the proposed action, although explained in different context, what is stated in the Charter of Sustainable Tourism, which aims to promote and support <<any form of development, planning or tourism that respects and preserves long-term natural resources, cultural and social and contribute in a fair and positive economic development and full realization of the people who live, work and stay in protected areas>>.

The Ecomostri (eyesores) between Illegal and Legal Blight

However, the considerations are obviously disappointed when we see the construction of building complexes with or without tourism, which in no way fit into the surrounding environment, broadly construed; attention back, therefore, still in its *ecomostri*¹⁹. And 'Needless to say that whenever we find ourselves facing the phenomenon into account the failed policies mentioned above, although in some cases the landscape disfigurement occurs regardless of the statutory provisions violated or the Board of abuse. Consider, in fact, all cases in which the work was originally to be implemented in line with the surrounding environment and the territory which was to insist, so much to be approved in its entirety, but then, due to factors unrelated to 'environment, landscape and planning, was interrupted and not completed, causing a vulnus in its urban surroundings.

Omission also human and not just a speech, therefore, may cause damage to the landscape and create incompatibilities landscape and environment.

In this regard, recently the Council of State²⁰ ruled that degradation is not meant to <<necessarily only a situation of natural degradation, or degradation resulting from urban-housing settlements built legitimately>>. If it was a tourist resort abusive, which hung for instance building amnesty, whose restoration project included the one hand, the removal of a pedestrian and vehicular traffic for public use and, secondly, the replacement of huts low building with a completely new and different, with an elevation of two storeys off the ground. In this regard, the administrative judge, by invoking Article. 48 of PTCP, which in turn applies a conservative regime in order to settlements in order not to alter the balance achieved between the settlement and the natural environment, states that <<the goal is to

¹⁷ In this regard, Article. 135, co. 4 of the Code of Cultural Heritage and Landscape provides: <<For each area landscaping plans define specific requirements and weather in particular order: a) the conservation of components and morphologies of landscape assets under protection, taking into account the types architectural techniques and construction materials, and the demands of restoring the landscape b) the rehabilitation of areas affected or degraded>>.

¹⁸ Imperato, *Il turismo nelle aree naturali protette, op.cit.*

¹⁹ Several measures are defined complex *ecomostri*, some of which have been filed, while others did not reach the front pages or occupied courtroom. Among those now demolished, just examples we can recall: Lido Rossello, near AgrigePunta Perotti (Bari) Hotel Fuente - Vietri sul Mare (Salerno), partially demolished, Blue Residence - San Giuliano Milanese (Milan), skeleton of Palmaria (island of the province of La Spezia), Villaggio Coppola - Castel Volturno (Caserta), an entire town abusive, the skeleton of Residence Paradiso at Fossa Maestra (Carrara), Broom Bay Hotel - Port Malu at Teulada (Cagliari).

²⁰ Cfr. Consiglio di Stato, 20 gennaio 2009, n. 1192, in *www.giustizia-amministrativa.it*.

keep the situation essentially unchanged quo regarding the quantitative and qualitative relationships between the settlement and the environmental context. Interventions are also welcome episodic preordered the recovery of any individual situations of degradation. It is not allowed either to build new buildings or altering existing ones except to adapt to the characteristics of their area, and is forbidden to open new routes or change the layout or typological characteristics of existing ones, or alter the perceived extent of countryside and morphology land development>>. Therefore, states the Council of State <<the concept of degradation is sufficiently broad and descriptive, to embrace also abuses building, provided the necessary coordination between planning and building amnesty>>. For our purposes, the reasoning followed by the administrative judge implicitly leads to believe and to admit the existence of a degradation in the face of a work originally legitimate, as authorized, but not completed. If this is so, one can understand how extensive is the scope of eco-monsters and that there is a legal concept of this phenomenon.

Indeed, in general terms and beauty can be defined such that is the bizarre, but legal, the result of rational choices²¹. This concept certainly influenced by relativism and can not be considered in objective terms. Therefore, other criteria must be considered to draft some comments in terms of discipline.

Two cases may be experiencing the realization of an *ecomostri*, seen as "legal damage" of surrounding landscape.

The first occurs when the company was completing its work, it stops and leaves the investment leaving the work unfinished, with predictable consequences in terms of environmental and territorial.

The second case is given instead, the failure of public policies, that is when the action of government land put in place has not been able to avoid creating situations of degradation. In these terms, therefore, is acceptable, the oxymoron " *ecomostri* legal" because the negative effect on habitat, broadly construed, is produced regardless of the violation of law or the Board of abuse.

The conditions for the realization of this particular type of *ecomostri* are not merely the result of rational choices that can be taken by the private or can be the result of use, yet correct, the administrative discretion of a single government.

In the first scenario is a company that applied for and obtained a permit and the permission to carry out the work, but failing to finish in second is the local authority decides to issue the relevant permits, as it considers the legal proposed project.

However, even if legally the initial choice is the subject of public and private shows correct this data is not sufficient by itself to prevent the execution of an *ecomostri*, in the sense explained above. Indeed, when the work is not fully realized, either because the money is not enough to cover the entire work or why the company decided that the investment is no longer affordable or, finally, as an institution public fails to integrate the structure into the surrounding incomplete, for example through a recovery of part of it for other purposes, easy to predict and are inevitable consequences that occur with the result of rulings of the court at sentencing 'reduction of complex left unfinished.

Added to this is another significant issue in terms of difficult times in the understanding of different disciplines applicable to this case, leading to recognize the complexity of the primary public interest in the difficult balancing of interests.

This is what happened in a recent ruling by the European Court of Human Rights²², which in relation to *ecomostri* called Punta Perotti, in the Puglia region, has condemned the Italian government to compensate the owners, as the confiscation of land which had taken place would violate the European Convention on Human Rights and the right of ownership.

²¹ Candela G., Castellani M., Mussoni M., *Tourism Investments Under Uncertainty: an Economic Analysis of "Eco-monsters"* in corso di pubblicazione in *Tourism and Economic*, 2009

²² European Court of Human Rights 20 January 2009 in www.lexambiente.it.

Specifically, it was a construction of a building on land situated near the sea, near Bari. The authorities ordered the preventive seizure of criminal assets, arguing that it insisted on a protected natural site. The owners proposed appeal to the Supreme Court, which overturned the seizure, because under the city planning there was no prohibition to build. However, the same story for the manufacturing companies were investigated and although the Supreme Court has considered the development agreement illegal because the building was erected in violation of the prohibition of building on a site subject to constraint landscape, it shall discharge the accused, as the offence is not.

The Court explained that with regard to the regional rules were confusing, poorly worded and even contrary to the national one.

However, this did not prevent the Court to order the confiscation of the assets of manufacturing companies that resorted to the European Court for Human Rights, complaining of causation and moral damage as a result of the transfer of ownership of the land confiscated to the municipality of Bari. The Strasbourg Court, upheld the appeal, stating that << there can be no expropriation without legal basis...>> and << can be no penalty if there is a fault>>. The confiscation of property, so should not take place because there were no requirements for predictability and accessibility and clarity necessary to implement such a sanction. Therefore ordered the Italian state to compensate owners of property and moral damage suffered.

As saying that the environmental, tourism, and urban landscapes as well as those concerning property rights, forming the basis of various administrative actions, shall meet in their explanation, the rule of law, can not be considered in an absolute sense, but conversely having to be weighed with all the interests at stake, so that they achieve the public purpose, understood as being of society.

Punta Perotti (BA)



(<http://images.virgilio.it>)

Conclusion

In conclusion, only the cooperation between different levels of government and an effective

interrelationship between the heterogeneous industry regulations may be auspicious for the Protection of places, which may become more popular for buildings causing damage and disfigurement rather than for natural beauty of the area.

In this respect, it becomes emblematic of the provisions in the European Charter of Sustainable Tourism in Protected Areas, which states that <<each area has different needs, though you need a comprehensive approach that links the stakes in environmental protection, development Economic and social, quality of life and satisfaction of visitors. A sustainable tourism development strategy must therefore be based on a comprehensive diagnosis of the needs of an area and its potential for tourism>>.

In these terms, an effective tourism policy can be a powerful lever for sustainable development, or even a tool for sustainable tourism landscape transformed into a landscape of decay.