THE CARE OF MONUMENTS IN ITALY

by Gisberto Martelli

Ex-Chief Inspector of Monuments in Lombardy; Member of the Higher Council for Antiquities and the Fine Arts; Hon. Life Fellow of the Ancient Monuments Society. This article has been translated from the Italian by Ivor Bulmer-Thomas.

THE care of structures of architectural or historic interest is regulated in Italy at present by the law of 1st June, 1939, no. 1089, to which must be added that promulgated on 21st December, 1961, no. 1552. To obtain a general picture of the question it is necessary, however, even without indicating the ample material prepared for the study of reforms, of which the urgency is much felt, to have recourse to the old law of 20th June, 1909, no. 364, and to the corresponding regulation of 30th June, 1913, no. 363, since some of the provisions made at the time in conformity with that law are still valid, and since the regulation which should have followed the law of 1939 has never appeared, and consequently the norms set by the regulation of 1913, so far as they are applicable, are still valid.

In essence the law of 1909 was directed solely to the protection of monuments and to their conservation. The aim was to make the respective owners, whether corporate bodies or individuals, aware of the aesthetic interest of the monument in question and to require them not to lay hands on it in any manner without first ascertaining that there was no objection to the work proposed on the part of the competent department, that is, of the Inspectorate of Monuments.

The procedure was the simplest that could be imagined. In order to bring to the knowledge of corporate bodies or individuals the aesthetic interest of a building that they owned it was considered sufficient to serve on the mayor of the municipality a notice enjoining him to "publish" the notification by means of the public crier, and to supplement this by the requirement that a copy bearing the certificate of the local authority that it had been published should be placed in the archives.

These requirements are still in force.

The extreme simplicity of the procedure, granted that it lent itself to a speedy dispatch of business, had in itself many defects. Few

traces, indeed, of these requirements, and these all too ephemeral, have been left outside the dusty files of the departmental archives!

The new law of 1939 was chiefly concerned with this aspect of the matter. It introduced new juridical principles, which are interesting in themselves even if their essence is in part disregarded.

The "objects" protected by the law by reason of their important aesthetic or historic interest are divided into two big classes: those owned by public bodies (provinces, communes, parishes, hospitals, and so on) and those owned by private individuals.

For the first class it is envisaged that it is for the public bodies themselves to produce the list of objects of aesthetic interest of which they are the owners (so that in effect the objects owned by public bodies are protected *ope legis,* by respect for the law). For the second class, that of objects owned by private individuals, the aesthetic interest must be the subject of a notice to the interested owner. When the object is real property—a structure—the notice of its important aesthetic interest must be stated in a decree of the Minister of Public Instruction, a decree which is in due course inscribed in the register of real property, like a mortgage or easement rent, so that it will remain efficacious after a succession to the title or when there is a new owner following a sale.

It is an interesting consequence, even if not altogether a new idea—that there are in this law certain rights conferred on the Minister as regards buildings of important aesthetic interest which are made the subject of a notice: (a) the right of pre-emption in case of sale, regulated by Articles 31 and those that follow, by which the Minister can by means of his own decree substitute himself for the purchaser by paying the price mentioned in the contract, the Office of Public Instruction thus becoming the owner of the property; and (b) the right conferred in Article 21 to lay down by means of an appropriate decree, to be inscribed in the register of real property, standards for property (buildings or land) adjoining the structure which is subject to the restrictions in order that its setting, light and appearance shall not suffer damage.

In such a manner the protection is extended to the surroundings of the monument, and it is possible to freeze the existing situation, perpetuating it by means of precise dispositions (bans on construction, excessive height, changes of colour and materials, demolition); or to predetermine a development (construction to a height exactly laid down, on fixed alignments, and so on).

As can be seen, these are rules that bear very heavily upon private property; in particular the control envisaged by Article 21 of the law is a burden on the owner of an isolated piece of land or of a little house adjoining a monumental building with which it has almost nothing in common, and whose presence thus imposes grave restrictions on the free exercise of ownership.

It is a serious gap in the laws now in force to have overlooked this aspect in not assessing, even from the mere monetary angle, the sacrifice imposed on property by these indirect restrictions determined by the neighbourhood of a monumental structure.

The law of 1939, in Articles 14 and the following up to 17, also contemplates some timid new steps towards active protection, barely touched upon in Article 7 of the law of 1909. Whenever there is proof that it is impossible for either corporate bodies or private owners to carry out at their own expense the works necessary to prevent deterioration of the building, the State can substitute itself for the owner, and assume the responsibility for the necessary cost, which is to be reimbursed by instalments apportioned by its own financial officers. This last provision of the law was clearly meant to be comprehensive in its effects, but in practice it was always disregarded, because if such reimbursement was imposed on corporate bodies such as provinces, communes, hospitals, and so on, the local administrations would be placed in serious difficulties; and for ecclesiastical bodies, such as parishes, the application of the rule would be impossible since nearly always these bodies do not have resources furnishing incomes of this order.

Nevertheless, taking advantage of this possibility offered by the law, the State has intervened frequently with financial help when obliged to deal with the property of corporate bodies, and there is a very considerable number of monuments which have been saved by means of this procedure, which was strictly beyond the limit of what was administratively permissible. It is important to emphasize how among the buildings which have benefited from these sources of help are not only living monuments, such as churches in use, but also, and in a big way, monuments in a state of dramatic, absolute dereliction, such as churches no longer in use, often with their roofs partly or wholly collapsed, which have been saved only an instant before they would have become a more or less picturesque ruin to add a note of sadness to the landscape.

To bring a little order into the situation the law of 21st December,

1961, no. 1552 was passed. In a few words it showed how to regularize the weight of past burdens in the sense that it contemplated a general indemnity, with renunciation of repayments, leaving it in the future at the discretion of the Ministry of Public Instruction to judge in each case the expediency of assuming the necessary cost of the repairs at the charge of the State, either for the whole or in part.

But another aspect, and of the greatest importance, of the same law is that which envisages the right of the Ministry of Public Instruction to make contributions to corporate bodies or private owners to meet the expenses in the restoration of a monument, up to a maximum of fifty *per cent*, provided that the works are executed according to accepted standards of restoration and have the approval of the Inspectorate of Monuments for the area in question.

This financial contribution has been of the utmost benefit to the owners of buildings of important artistic or historic interest which have been made the subject of restrictions, whether by means of the law of 1909 or by that of 1939; it is, however, the only benefit, since the Italian legislation in force does not envisage fiscal facilities of any kind, whether through direct taxation or by the inheritance duties. Various studies made even at the level of parliamentary committees for a new regulation of the situation by means of the promulgation of a new law do, however, suggest proposals for some tax concessions; but the only example to be found at present in Italy is that of the special law for the Venetian villas, no. 243 of 6th May, 1958, renewed on 5th August, 1962, no. 1336, which envisages fiscal benefits both direct and indirect of very great interest. In new legislation the owners of real property certainly ought not to be forgotten when they have suffered drastic restriction simply because this property happens to be near monumental structures, public or private, which it is desired to protect in the traditional surroundings.

But the future legislation on this subject should also be enriched by other provisions, and in particular should take account of the positive experience gained by the Administration of the Province of Milan, which has made contributions to the communes for the acquisition of monumental structures for cultural purposes and for the reconstruction, with criteria of true and authentic restoration, of parks and gardens.

The listing of buildings of architectural or historic interest in Italy has certainly not made much progress. Of course the evolution of critical appreciation must be taken into account, for a building which

a few decades earlier would have been calmly consigned to demolition, whenever this seemed to become necessary for any reason, may today be considered of great aesthetic interest and so be added to a continually increasing number of listed buildings.

It would appear that listing or scheduling, even if carried out carefully and methodically in the light of the notes prepared by the Council of Europe, does not attain the fullness of its aim unless such a procedure, whether treated simply as a matter of registering and indexing or at a deeper critical level, is immediately followed by administrative provisions in the nature of a covenant, that is, by a ministerial decree notified to the private owner and properly inscribed in the register of real property. It is only by means of such documentation that a relationship is established between the property to be protected and the law which protects it, to ensure that the responsibility of the present owner is transmitted to those who, for any reason whatsoever, succeed him. The very fact that a restrictive covenant is a solemn act going with the building beyond the present ownership requires basic guarantees which greatly complicate the drafting of such provisions. So in practice procedure involves the same difficulties as before and a considerable mass of work. It is necessary to know the status of the property in the land register, the entries in the registers of births, deaths and marriages, the domicile of the individual owners (in the case of joint ownership, for there may be more than ten owners of a single building), and the title to the adjoining properties. Next it is necessary to formulate a precise reason for the measure taken, in order that this may survive any challenge to its legitimacy before the Council of State. It is then necessary to supply plans, photographs and reports, and to have the whole completed by the signature of the Minister. Lastly there comes in succession the formal completion, such as the notification of the decree to the owners, and its inscription in the registers of real property.

As will be seen, the procedure is exceedingly cumbersome, and this is the chief cause of the delay in the fulfilment of the programme which is found in every part of the national territory. For this reason it can confidently be said that, at least with the present low number of officials able to carry out this work, it will not be possible in a reasonably brief period of time to extend a satisfactory net of protection to the buildings of architectural interest in private ownership. For buildings in public ownership, such as churches, whether in use or not, whenever doubts are expressed about the legality of the general rule

by which it appears that they are protected by the same law, there exists a remedy, which pertains to the Inspector and not to the Minister, to record, by a simple registered letter, that this particular building, briefly described and precisely indicated, is to be considered as forming part of those "lists" which the corporate body owning them is required to compile and exhibit.

Simplification of the burdensome rules described is certainly possible; but for such sensitive material, which affects very considerable interests, it is not possible to contemplate very simple procedures which would not lend themselves to abuses and which might become, precisely because they are too simple, wholly inefficient.