



Paolo Cavana

(Associate Professor of Ecclesiastical and Canon Law
Faculty of Law, LUMSA University – Rome)

The issue of redundant places of worship *

INDEX: 1. The issue of redundant places of worship in Europe - 2. Canonical perspectives - 2.1. The regulations according to the Code of Canon Law - 2.2. General criteria for change in churches' deployment. The *Guidelines* of the Episcopal Conference of Italy (CEI) about the cultural goods of the Church in Italy (1992) - 2.3. The documents of other episcopates (Germany and Switzerland) - 3. The phenomenon of churches' desertion in some countries - 3.1. France - 3.2. Québec (Canada) - 3.3. United States of America - 4. The situation in Italy - 4.1. Ownership of the churches - 4.2. Financial aspects - 4.3. Legal protection of the destination bond - 4.4. Churches as cultural heritage - 4.5. Fiscal considerations - 4.6. The recent CEI *Directive* (2005) - 5. Concluding remarks.

1 - The issue of redundant places of worship in Europe

Today, one of the major issues concerning the ecclesiastical, or religious, property in Europe, as elsewhere, consists of deciding what to do with redundant churches and places of worship, all of which have lost their original use, either due to a formal decision of the ecclesiastical authorities, or to simple closure to the public. For these places there is either the prospect of a new use, or a slow process of decay which can ultimately end up in a sale, or demolition¹.

A similar problem is today felt with singular urgency by Europe, a land of ancient Christian heritage. In fact, secularization, demographic

* Full text, with notes, of the paper presented at the International Conference "*Holy places and religious institutions. Comparative legal and religious approaches – Italy/Balkans, Israel/Palestine*", organized by LUMSA University (Rome) and the Catholic University of America – Columbus School of Law (Washington) in Rome, LUMSA, December 10-11, 2008: Dec. 10th session on the subject of "*Holy places and religious property in Italy*". It will be published in the conference proceedings. Translated from Italian by Paola Bernardini.

¹ First hand information and data on the phenomenon as it mostly pertains to some European countries can be found in L. Pr., *Costruire e dismettere*, in *Regno-att.*, 22/2006, 746; ID., *Le chiese dismesse*, in *Regno-att.*, 2/2006, 16-17.



development and the arrival of new faiths have determined a significant decrease in the church attendance. The redistribution of the population on the territory and new urban planning projects have determined, at first, the abandonment of the countryside and mountain locations and, today, a progressive desertion of the historic town centres in favour of the newly developed suburban areas.

Last but not least, the fall in religious vocations, the increase of the real estate management costs and limited public resources, do increase the risk of decay of a good portion of the religious historical-artistic heritage.

In the nineteen hundreds, Europe had already experienced episodes of compulsive and extensive desertion of religious buildings and churches, due to the expropriation and nationalisation process. Today, however, the issue concerns not only the religious community – for easy to understand financial and pastoral reasons – but also the civil authorities and the public opinion. These, in fact, are very sensitive to the protection of the artistic and historical heritage, of which a consistent portion is represented by churches and other worship places, perceived as the historical memory of the communities.

At the European level, awareness of the issue resulted in a resolution of the Parliamentary Assembly of the Council of Europe in May 1989, which focused on the specific theme of the preservation of the deserted religious buildings. The resolution recognized in those buildings “*ideals and principles which are the common heritage of member States*”² and recommended the authorities in charge of the matter – Churches, governments and local communities – “*to co-operate*” with all relevant organizations and experts in order to assure both the preservation of the buildings as well as the implementation of projects compatible with their original purpose. To this effect, financial and fiscal benefits were foreseen for their restoration and maintenance, thus avoiding the risk of their abandonment³.

² **COUNCIL OF EUROPE - PARLIAMENTARY ASSEMBLY**, *Resolution 916* (9 may 1989) *on redundant religious buildings*, in <http://assembly.coe.int/Documents/>.

³ “When a religious building is no longer viable as such, efforts should be made to ensure a future use, whether religious or cultural, as far as possible compatible with the original intention of its construction” (**COUNCIL OF EUROPE - PARLIAMENTARY ASSEMBLY**, *Resolution 916* (1989), cit., n. 7). In this case, it is necessary – according to the Council of Europe – to promote “projects for re-use and adaptation which are not incompatible with the original function of the building and do not cause irreversible alteration to the original fabric” (v) and to budget “funds or tax benefits for the restoration, repair and maintenance of religious buildings whether in use, or redundant, in order to ensure they are not abandoned” (vi), *ibid.*



In Italy, this issue is confined almost exclusively to Catholic worship places, due to their wide distribution within the entire national territory and to their historical-artistic significance. In fact, we will mainly deal with these, albeit we are aware that in the future this issue might also concern other religious denominations.

The specific Catholic conception of the church, as a building open to public devotion and worship of the Holy Eucharist, grants to the perspective of its desertion a complexity which is not present in other religious experiences where the worship building is regarded more as an assembly place⁴. Therefore, it is clear that the problem of the conversion of worship places to uses still compatible with their original destination is of special concern for the Catholic Church.

In dealing with this subject we should avoid, as suggested also by the Council of Europe, the double temptation of reducing it to an ownership issue – to be judged according to the subjective choices related to the single owner – or to a protection of the artistic-historical heritage problem, focusing exclusively on the architectural-artistic value of the building and its furniture⁵.

The dimension of the issue and its impact on the entire civil society requires all the stakeholders (owners, ecclesiastical community, civil authorities) to adopt a constructive spirit of cooperation⁶, particularly at

⁴ The alienation of worship-places is becoming more common across Europe, in particular within countries belonging to the Protestant tradition. In England, Germany and Holland, for example, Churches and Chapels have been set-up for very different purposes: as museums, libraries, movie houses, discothèques and even as Mosques. In Switzerland, a Protestant Church has been sold and acquired by a private individual with the intention to make a private residence (in www.swissinfo.ch, 5 March 2007). In England, given the plan to close hundreds of rural postal offices, a negotiation is ongoing between the Anglican Church and the Royal Mail Administration to establish post-offices in the churches and parishes across the countryside (in www.christiantoday.com/).

⁵ With reference to the historical and artistic heritage of ecclesiastical nature, see **C. CARDIA**, *Lo spirito dell'accordo*, in M. Madonna (a cura di), *Patrimonio culturale di interesse religioso in Italia. La tutela dopo l'Intesa del 26 gennaio 2005*, Marcianum Press, Venezia, 2007, p. 29 ss. This states that it cannot only be considered as a private object, unavailable as such for public protection and use, and at the same time that it cannot be subjected to public interventions which ignore its religious profile and its coherent belonging to individual Churches or denominations.

⁶ On the matter of State and Catholic Church cooperation regarding cultural goods see **G. DALLA TORRE**, *Lezioni di diritto ecclesiastico*, Giappichelli, Torino, 2007, p. 279 ss.; **C. CARDIA**, *Tutela e valorizzazione dei beni culturali di interesse religioso tra Stato e Chiesa cattolica*, in G. Feliciani (a cura di), *Beni culturali di interesse religioso*, il Mulino, Bologna, 1995, p. 55 ss.



the local level, to promote the recovery of the buildings and, if necessary, to find them a new destination of use able to assure as much as possible their original intention and access by the entire community.

2 - Canonical perspectives

2.1 - The regulations according to the Code of Canon Law

The Code of canon law describes only the general terms under which a church may be used for a legitimate civil purpose (“*in usum profanum non sordidum*”) upon a formal decree of the local bishop (can. 1222):

a) When a church “... can no longer be used as a place of public worship and it is impossible to restore it ...” (§ 1) (this implies the physical impossibility: like in the event of its destruction, *ex can. 1212*);

b) for “other serious reasons” which “demand that a church no longer be used as a place of public worship”, after due consultation with the Presbyterial council, with the agreement of whomever holds rights on the building and avoiding any damage to the community of the faithful (§ 2).

This second instance, not covered by the Code of 1917 and by the “*jus vetus*” (which would cover only the provision contained in § 1), results from a new awareness of the problem surfaced during the works of revision of the “*Codex*.” These works, honouring the principles of subsidiarity and pastoral care, granted the bishop more authority in this matter albeit limited to the event of “*graves causae*” and with the safeguard of the spiritual welfare of the faithful⁷.

These regulations, however, are not of great benefit in the analysis of the matter since they do not consider certain situations (for example the closure of a church by the ecclesiastical authority without a formal reduction to civil use) and, in addition, they do not help in determining the future use of the church. This last point is, in fact, the main reason of concern for the ecclesiastical community which is always attempting to respect the original religious vocation of the building.

⁷ See **G.P. MONTINI**, *La cessazione degli edifici di culto*, in *Quad. dir. eccles.*, 13 (2000), pp. 284-286. On the subject see **F. DANEELS**, *Soppressione, unione di parrocchie e riduzione a uso profano della chiesa parrocchiale*, in *Ius Ecclesiae*, 10 (1998), pp. 111-148; **C. GULLO**, *Brevi note sulla gravità della “causa” necessaria per ridurre la chiesa a uso profano*, in *Dir. eccl.*, 1997, II, pp. 7-11; **H. WAGNON**, *Églises. XII. Désaffectation des Églises*, in *Dictionnaire de droit canonique*, in care of R. Naz, vol. V, Librairie Letouzey et Ané, Paris, 1953, col. 209.



2.2 - General criteria for change in churches' deployment. The Guidelines of the Episcopal Conference of Italy (CEI) about the cultural goods of the Church in Italy (1992)

Several national episcopates have developed guidelines, or specific criteria on the subject matter, in order to find suitable solutions.

The Italian Episcopal Conference (CEI) was the first one to intervene with a 1992 document – “*I beni culturali della Chiesa in Italia. Orientamenti*”⁸ – containing and bringing to fulfilment, on the basis of previous suggestions dated 1974⁹, a new awareness regarding the importance of the safeguard and protection of cultural goods of a religious nature: witness of the faith of the Christian community and of its historical roots¹⁰.

With this idea in mind the document identified a series of situations at risk of deterioration and, as such, worthy of particular attention and of “absolute priority” in terms of *cataloguing* and *security* measures equipment (nr. 23, 25-26). In particular:

a) the *unguarded churches*, for which it is foreseen that they “should be opened to the public only when local conditions do guarantee safety” (nr. 23);

b) the *cultural ecclesiastical goods which belong to dioceses or parishes which have been suppressed*, possibly including churches or chapels, for which it is recommended “that the new owners must take care of them with due diligence, reconciling the need of respect of territorial ties with that of security” (nr. 25);

c) the *cultural ecclesiastical goods which belong to parishes with uncertain supervision by the clergy* (churches located in areas which are subject to depopulation, or where there is scarcity of clergy, or have no resident priest; churches close to national territorial boundaries, small countryside chapels and churches, nr. 26).

⁸ CONFERENZA EPISCOPALE ITALIANA, *I beni culturali della Chiesa in Italia. Orientamenti*, Roma, 9 December 1992, in *Enchiridion della Conferenza Episcopale Italiana*, V, Bologna, 1996.

⁹ EPISCOPATO ITALIANO, *Norme per la tutela e la conservazione del patrimonio storico-artistico della Chiesa in Italia*, Roma, June 14, 1974, in *Notiziario CEI*, 6/1974, pp. 107-117.

¹⁰ On the subject, see G. FELICIANI, *Normativa della Conferenza Episcopale Italiana e beni culturali di interesse religioso*, in G. Feliciani (a cura di), *Beni culturali di interesse religioso*, cit., p. 129 ss. On cultural and ecclesiastical goods according to canon law, see C. AZZIMONTI, *I beni culturali ecclesiali nell'ordinamento canonico e in quello concordatario italiano*, Edizioni Dehoniane, Bologna, 2001, p. 111 ss.



In addition, the document highlighted the role of *urban planning* taking in consideration that “the future of single buildings, of historical centres and of the natural environment depends on the political choices outlined in urban instruments such as regional or zone-based regulatory plans” (nr. 24).

Regarding the possible “*change of destination*”, this is considered as a last resort decision, since the favoured mean to preserve the cultural ecclesiastical goods was clearly identified in their “use in conformity with the original intention” as well as in “their permanence within the ecclesiastical domain”, towards the accomplishment of which the Christian community had to spare no effort.

Nevertheless, in case the safeguard of the above conditions proves to be impossible, it was foreseen that *the churches no longer used for the liturgy and parish service* be:

a) “preferably used for *subsidiary functions, or for functions of worship by specific communities*” such as – we dare say - liturgical use by associations, or ecclesiastical movements, by Catholic communities of other nationalities, or by other Christian communities – such as the Christian Orthodox – on condition they offer guarantees for their correct use. In this view, some buildings presently deserted can become a resource by meeting the religious requirements of the immigrant communities, and help face some of the challenges brought forward by multiethnic societies;

b) used “*for other compatible purposes* such as cultural events, sites for artistic activities, libraries, archives or museums”;

c) it is also foreseen that the “*temporary change of destination*” be “always regarded as a better choice to the desertion of the building”;

d) only in extreme instances, when there is no other choice, the building could be sold, preferably to “new owners who can assure not only its total preservation but also its, at least temporary, public use”.

2.3 - The documents of other episcopates (Germany and Switzerland)

The most recent documents of other European episcopates, like the German (2003)¹¹ and the Swiss (2006)¹² – in the context of a wider process

¹¹ Cfr. **SEKRETARIAT DER DEUTSCHEN BISCHOFSKONFERENZ**, *Umnutzung von Kirchen. Beurteilungskriterien und Entscheidungshilfen. Arbeitshilfen* (175), 24 September 2003 [Change of destination of the Churches. Criteria and practical suggestions], with introduction by Card. Karl Lehmann, President of the German Episcopal Conference, in www.dbk.de/.

¹² **SCHWEIZER BISCHOFSKONFERENZ**, *Pastoralschreiben Nr 13. Empfehlungen für*



of secularization and in light of a reduced artistic-historical heritage able to attract public financing – have reflected extensively on the matter and have provided unique contributions.

The document of the German Episcopal Conference represents today the most coherent and well-thought reflection on the subject, expressing great concern for the substantial financial burdens – born almost entirely by the dioceses – derived by the effort to preserve this heritage. A series of criteria for the estimate of different situations is clearly examined, taking in consideration both the necessity to preserve the original use of the building as well as the pragmatic need to consider contingent situations and contain the maintenance costs (nr. 4).

In particular:

a) a distinction is made between the situations of the *village* and of *the urban centers*. In the village, churches represent a central building and therefore – even if their liturgical use is reduced – should be preserved for the community. In this context, therefore, it is preferable a partial change of use (for instance a mixed use) rather than the demolition of the building. Regarding the situation of the *urban centers*, the progressive relocation of the population from the centre to the periphery may determine the substantial closure of old churches with artistic value in the historical centers. However, these could be valued and acquire a new identity as a mother parish (*Heimatpfarrei*) within the context of new projects developed by the union, or association, of more parishes (*Pfarrverbänden*). The demolition of the church should always be considered as the “*ultima ratio*” (last resort) after having assessed the impossibility to utilize the church for other liturgical use, even by other Christian communities (4.1);

b) if a building is of historical-artistic relevance, preference is given to its alienation to the public rather than private domain, in addition to its use for *cultural* rather than *commercial* purposes. The latter, along with the *mixed use*, are not excluded, just as long as they pertain to the dignity of the sites;

c) the event of the *rental* of the land surrounding the church for commercial use is also considered as a better alternative to the restructuring of its interior for commercial needs. This would in fact imply a more or less drastic alteration of the building (4.2);

die Umnutzung von Kirchen und von kirchlichen Zentren, 8 September 2006 [Pastoral Note nr. 13. Recommendations in case of change of destination for Churches and ecclesiastical centers], in www.kath.ch/sbk-ces-cvs/, where it is available a brief summary in English.



d) the adoption of a rule of *reversibility* is foreseen for those real-estate projects implying new uses of the church in order not to compromise the possibility, in the future, of reverting to the original site destination.

e) It is recommended to examine each situation without pressure bearing in mind that sometimes new circumstances and the elapse of time may give rise to unforeseen and un-hoped solutions.

As to the different options in relation to the change of *destination* of the churches (nr. 5), the document concludes that the preferred solutions are those which nonetheless preserve the ecclesiastical ownership of the site (5.1), by mean of:

a) *change in its liturgical use*, made possible through *i*) the concession of use to other Christian churches and ecclesiastical communities (for example Evangelic or Orthodox parishes)¹³, or to other Catholic communities of foreign origin; *ii*) the mixed use (or shared: *Mitschnutzungen*) of ecclesiastical, municipal and cultural entity; *iii*) the reduction of its liturgical use (for example as a sacramental chapel or working day chapel only); or *iv*) a partial modification of use which would impact only one section of the church;

b) *suspension of its liturgical use*, for example by mean of exploitation of the site for other ecclesiastical uses (as a charity-organization, or an ecclesiastical administration site, or a museum, archive and library) or by *rental* of the entire building for ecclesiastical, cultural or commercial use.

The *rental for commercial use* is preferred to the sale since it would avoid the loss of ownership and a future *demolition*. It would also allow the possibility of reverting to its original use in the future¹⁴.

Every contract, be it of rental or of sale, should contain provisions aimed at limiting its use by third parties and rendered effective through their subscription in the cadastral registry (*Dienstbarkeit*), which in Germany has constitutive efficacy (Central European Land Registry

¹³ Similar suggestions are given by the Swiss Episcopal Conference (*Pastoralschreiben Nr 13*, cit., p. 4), which recommends to give priority to the Catholic religious communities and to the new ecclesiastical movements, followed by the pastoral needs of the foreign communities which lack suitable spaces, provided that they guarantee that the churches given to them will remain dedicated to worship and that the annexed buildings continue to be meeting places, potentially open to other communities (nr. 3.2.1).

¹⁴ The document of the Swiss Episcopal Conference (*Pastoralschreiben Nr 13*, cit., p. 5) clarifies that "the uses [of a place of worship] for a pure commercial reason should be avoided when they are not in harmony with the Christian ethics" (nr. 3.2.1).



System¹⁵), giving rise to real negative easement on the building, aiming at avoiding uses which do not reflect their original destination¹⁶.

The concession in use, or the sale of churches, or other buildings of worship, to religions which are distant from the Christian faith (Islam, Buddhism, sects) is instead forbidden both for its symbolic effect and in order to respect “the religious feelings of the Catholic faithful”¹⁷.

Demolition is considered acceptable only as an “*extrema ratio*” (last resort), that is as an alternative to a very expensive maintenance, or in presence of an inadequate and prolonged disuse. The land made available can be used for ecclesiastical purposes, or sold. In any event a memorial placard should be installed for future memory (5.3).

Also the most recent document of the Swiss Episcopal Conference considers demolition preferable in case that a potential concession does not grant a use of the property adequate to its original destination. Furthermore, it points out to the obligation to conform to the rules of the “*Codex*” on the administration of temporal goods (Book V) and to the particular law of the dioceses, in the event of a sale, or rental, of an ecclesiastical property.

¹⁵ On the German system of real-estate registry, which is also in use in Switzerland, and it is different to the Italian one, of French origin, see N. PICARDI, *Pubblicità immobiliare (sistemi di) – dir. comp. e stran.*, in *Enc. Giur.*, XXV, Treccani, Roma 1991, p. 3 ss.

¹⁶ See *Pastoralschreiben Nr 13*, cit., pp. 4-5, which specifies that the use of churches and other sacred places, for purposes different from the original, should be spelled out with “signed and written stipulations” (n. 3.2) and that the objectives of its use “should be rigorously described in the sale transactions” and subscribed in a cadastral registry (nr. 3.2.2).

¹⁷ “Die kultische Nutzung durch nichtchristliche Religionsgemeinschaften (z.B. Islam, Buddhismus, Sekten) ist – wegen der Symbolwirkung einer solchen Massnahme – nicht möglich. Dies geschieht mit Rücksicht auf die religiösen Gefühle der katholischen Gläubigen” (5.2.), *Umnutzung von Kirchen*, cit., p. 20. The document of the Swiss Episcopal Conference (*Pastoralschreiben Nr 13*, cit., p. 4) recognizes such restriction only in relation to churches and chapels. However it does allow, with due prudence, that ecclesiastical buildings not dedicated to worship (“kirchliche Zentren, die nicht gottesdienstlichen Zwecken dienen”) be made available to other religious communities, as cultural and meeting places, provided that these communities do not practice proselytism and are not against the doctrine of the Catholic Church (nr. 3.2.1). This provision, though, seems rather difficult to verify. The conception of the place of worship peculiar to the Catholic tradition – as a consecrated place open to public cult and personal devotion in front of the tabernacle and altar – once again surfaces here, making it difficult to consider its multi-functional and inter-confessional use. In fact this could be viewed as a syncretistic approach to the religious practice which is totally unacceptable by the Catholic and by other monotheistic traditions.



3 - The phenomenon of churches' desertion in some countries

The matter directly concerns the civil authorities of each single country, where it takes on different dimensions and features, being directly influenced by the historical development and the peculiarity of each single national situation.

3.1 - France

In France the ownership status is of great concern. In this country, as a result of the separatist legislation, the Catholic worship sites – in particular those built before 1905 – are owned by the State, or by the local communities (the cathedrals by the State and the parishes by the municipalities), which therefore own the great majority of the Catholic churches of artistic-historical interest¹⁸. Evidently, this situation creates a problem for the public finances on whose shoulders lay the entire, heavy costs of maintenance and also results in clear signs of decay and neglect even in some of the Parisian churches¹⁹.

¹⁸ Additional information on the regulations for the places of worship in France see **COMMISSION DE RÉFLEXION JURIDIQUE SUR LES RELATIONS DES CULTES AVEC LES POUVOIRS PUBLICS**, *Rapport*, September 20, 2006 (c.d. *Rapport Machelon*, after the name of the president of the Commission, Jean-Pierre Machelon), p. 29 ss., nominated by the, at the time, Minister of Interior - Nicolas Sarkozy – with the scope of designing concrete proposals to modify the current legislation, thus enabling public financing for the construction of new places of worship, in particular for the Islamic community. The protection of the religious heritage is taken care, since 1980, by the *Commission nationale pour la sauvegarde et l'enrichissement du patrimoine culturel*. Later in 2002 the Commission has been renamed *Comité du patrimoine culturel*, which is under the authority of the Ministry of Culture. It is composed by representatives of the different religious traditions, representatives of the Ministry and experts.

¹⁹ On the subject see **S. GIGNOUX**, *L'usure du temps menace le patrimoine religieux*, 4 janvier 2008 (in www.la-croix.com), which presents an alarming situation on the maintenance of the Catholic churches in France. The main problem – as highlighted in the article – is the use of these buildings, many of which have been closed or unguarded since many years. To save those buildings, it is first of all required «restaurer comme "pierres vivantes"» («to preserve them as "living stones"»), that is to create the conditions for their effective re-installment in the life of the community. The General Assembly of the French bishops has dealt with the matter in Lourdes in November 2007, by charging Monsignor Roland Minnerath, Archbishop of Dijon, to chair a working group on religious heritage, with the task of developing proposals for the better use of churches in the rural area. For, this problem is particularly felt in villages, where the church is the only constitutive element of identity still left intact. «Historiquement structurés autour de leur église, les villages y trouvent une cohérence, une lisibilité



From a formal viewpoint the rule of “*affectation légale*” which applies to churches – in virtue of their public ownership and of the provision of art. 13 of the 1905 Law – guarantees their actual worship destination even more rigidly than in other countries²⁰, offering legal protection against their desertion – and therefore potential loss – stronger than the one granted by the private property law. In fact, the procedure of “*désaffectation*” is foreseen only in certain specific instances well identified by the law, requires the agreement of the *affectataire* – i.e. the ecclesiastical authority, or the local governmental authority – and must finally be approved by the State Council (Conseil d’État)²¹.

architecturale qui risque de se brouiller en l’absence de ce repère. “Quand il n’y a déjà plus de café, ni de poste au village, avoir encore l’église est un luxe. C’est le lieu où la communauté se retrouve en cas de drame”, observe Bruno Foucart». To allow for the church to remain open as long as possible, and to welcome possible visitors, the State Council (Conseil d’État) has authorized the Municipality to hire a guardian. In some municipalities of the Bretagne region, students are employed to accompany visitors during the summer. But, sometime, the generous involvement of the residents is also required. The use of local volunteers has proven to be the safest manner to preserve the heritage. Also, the organization of cultural activities, in agreement with the entrusted priest, and in respect of the holiness of the site, helps to revitalize some places of worship which have been abandoned. A survey conducted in June 2007 by TNS-Sofres for the magazine *Pèlerin*, shows that 67% of the French citizens believe that “we must preserve the greatest number of churches”: “paradoxical – according to the magazine – since the number of those attending the church is in constant decline”.

²⁰ Art. 13 of the Law of 1905 stipulates that “les édifices servant à l’exercice public du culte, ainsi que les objets mobiliers les garnissant, seront laissés gratuitement à la disposition des établissements publics du culte, puis des associations appelées à les remplacer, auxquelles les biens de ces établissements auront été attribués par application des dispositions du titre II”. Due to the refusal by the Holy See to establish the new “*associations cultuelles*” required by the law – and to which the goods of the suppressed *établissements publics du culte* (art. 3-4) would have been transferred –, the Catholic churches which, at the time the Law was promulgated, were still ecclesiastical property, became property of the State (and of the Municipalities), whilst remaining at the disposal of the ecclesiastic authorities, and later, of the new *associations diocésaines* (1923-24), so as to guarantee their destination to worship on behalf of the population.

²¹ As mentioned in the *Rapport Machelon*, those places of worship are subject to the “régime de domanialité publique original (...) quasi figé et intangible”, and they are bound to “une affectation cultuelle gratuite, exclusive e perpetuelle” (cit., p. 30) which could cease only as result of complex “procédures de désaffectation”, by decree of the State Council and only in those instances regulated by law (the termination of the entrusted association or the *affectataire*; the cessation of religious services for more than six consecutive months, except in circumstances beyond one’s control; improper conservation of the building, or of the works contained, for lack of maintenance; disrespect of the buildings original destination; lack of compliance by the association to financial duties and to the regulations pertaining to historical monuments, art. 13, l. cit.). Only with an agreement between the public owner and the beneficiary, that is the



However, some rural municipalities – as a result of the amalgamation policy of the parishes declared by the ecclesiastical authority – are unable to sustain the heavy maintenance costs and have already been constrained, in the past, to officially execute the closure to the public of some churches in precarious conditions. This fact does accelerate the process of decay which could lead in time to an injunction of demolition in order to safeguard the public safety – leading in some cases, as already anticipated, to the upheaval of the local associations and part of the population²².

3.2 - Québec (Canada)

In the Canadian Quebec, which has a prevailing francophone and Catholic tradition, the opposite happens. In fact, as a result of its British influence, just a few years before the Revolution, Quebec has neither experienced the nationalization of the churches of the revolutionary period, nor the effect of the law of separation dated 1905.

The Catholic Church, similarly to other religious denominations, has entirely preserved the ownership of its religious heritage, which represents one of the major symbols of the cultural and historical identity of the region. The preservation and maintenance of this wealth poses nowadays serious financial problems for the ecclesiastical entities which are its title-holders (in particular to the *fabriques*, public juridic persons in the law of Québec, which are legally entitled to the ownership of the parish churches). Such problems have only partially been dealt with through the creation, in 1995, of a private foundation (*Fondation du patrimoine religieux du Québec*), with the participation of public funds, for the maintenance of the major religious sites (with particular artistic historical value)²³, along a model of intervention quite common in the Anglo-Saxon world²⁴.

competent ecclesiastic authority, the “*désaffectation*” could take place with a “*procédure amiable par arrêté préfectoral*” (p. 35). For additional information on the historical developments and the present state of affairs regarding places of worship in France see E. POULAT, *Notre laïcité publique*, Berg International Editeurs, Paris, 2003, pp. 135 ss., 155 ss.

²² On the subject there is a recent survey by Stéphanie Le Bars published on *Le Monde*, September 13, 2007, (“*Peut-on démolir des églises?*”, p. 3).

²³ In the Canadian Quebec, the issue of the protection of religious heritage, in particular of the churches – in light of the risk of their relocation, given the financial constraints of their entitled owners –, has been the subject of a recent debate at the National Assembly (*Consultation générale sur le patrimoine religieux du Québec*, September 2005 – January 2006). The *Commission de la culture*, which is competent in this matter, has



conducted a series of hearings of ecclesiastical, local and public authorities on the basis of a working document (**ASSEMBLÉE NATIONALE DU QUÉBEC - COMMISSION DE LA CULTURE**, *Patrimoine religieux du Québec. Document de consultation*, June 2005, pp. 1-37, in www.assnat.qc.ca/). The document identifies a list of issues whilst proposing, amongst hypothetical solutions, the possibility of the nationalization of its ecclesiastical heritage – like in France – in the context of a concomitant substantial financial support by the State. During the hearings, both the Diocese of Montreal and the Episcopal Conference of Quebec have had the occasion to intervene through their representatives, by formulating specific proposals, many of which directed to solve the problem of decommissioned churches, very much felt in the context of a growing social mobility and rapid development of the urban outskirts (see **ASSEMBLÉE NATIONALE**, *Les travaux parlementaires. 37^e législature, 1^{re} session. Journal des débats, Commission permanente de la culture*, 20 sept. 2005 – Vol. 38 Nr. 50, in www.assnat.qc.ca/fra/37Legislature1/DEBATS/journal/). In these hearings, the hypothesis of nationalization has been rejected, due to the recognition of the multiple social functions played by the places of worship to the advantage of the local population, and to its being contrary to the present legislation – which attributes ownership of the churches to vestry-boards (*fabriques*) and parish associations. Emphasis has been rather given to the strengthening of the synergy strategy started in 1995 with the institution of the *Fondation du patrimoine religieux*, a private non-profit entity (*corporation*), multi-denominational in nature, having the role of taking care of the restoration and preventive maintenance of the buildings, or other works, making up the religious heritage. Funding of this corporation is achieved with contributions of the different religious traditions, local communities and, on the basis of subsequent agreements reached with the Ministry of Culture and Communications, substantial ministerial contributions. The final document (**ASSEMBLÉE NATIONALE DU QUÉBEC - COMMISSION DE LA CULTURE**, *Croire au patrimoine religieux du Québec. Rapport*, June 2006, pp. 1-76, in www.assnat.qc.ca/), is rather interesting for the numerous suggestions and recommendations advanced also on the fiscal and urban-planning level. In terms of system governance, the document has opted for a solution of partial compromise, maintaining the present ownership regime – thus welcoming the requests of perpetration and reinforcement of the foundational Anglo-Saxon model advanced by the different churches and local communities, which is based on the involvement of the entire civil society and the use of mixed capitals – whilst recommending the National Assembly to transform the Foundation in a *Conseil du patrimoine religieux*, so as to place it under the supervision of the Ministry, in the face of a more substantial public financial support.

²⁴ In Great Britain, the *Redundant Churches Fund* – established with the *Redundant Churches and Other Religious Buildings Act* (1969) –, works with the mission to preserve, on behalf of the State and the Church of England, the Anglican churches, which have been declared redundant, together with their furniture, given their artistic and historical value. The *Trust* becomes the owner of the churches which have been to it assigned and takes care for the necessary maintenance. Its major sources of financing are represented by the State, which nowadays contributes for the most part to the costs, and the Anglican Church. Other financial resources come from local entities, professional associations, fund raising activities and private donations. The redundant non Anglican churches are also entrusted to a *Trust*. On the subject see **D. McCLEAN**, *State financial support for the Church: the United Kingdom*, in **AA. VV.**, *Stati e confessioni religiose in Europa. Modelli di finanziamento pubblico. Scuola e fattore religioso*, Giuffrè, Milano 1992,



This situation has recently led the bishops of Quebec to formulate a list of suggestions during a series of consultations in front of the National Assembly, charged with the issue of the preservation of the churches due to their strong symbolic and historical-artistic relevance. Amongst these, the Cultural Commission welcomed with favour the proposal of a *moratorium* on the building of new public sites in order to give priority to the use of redundant religious buildings. Thus setting, for a considerable portion of the religious heritage, a sort of reversed itinerary to the one forcefully imposed in several European countries during the eighteenth century²⁵.

Additional proposals have been formulated directly by the Parliamentary commission, amongst which: the immediate *moratorium* on the sale and restructuring of the religious sites – so as to allow sufficient time for the completion of the inventories and the formulation, by the legislator, of suitable means to avoid their dispersion²⁶; the introduction in the legislation of a detailed “*mécanisme d’aliénation*” for all sites destined to religious use, witnessing the participation of all interested subjects and the entire community, in order to enable the protection even of those buildings having a purely local historical-artistic relevance, and to enable the municipal authorities to preserve others for broader use by the community²⁷.

pp. 82-83.

²⁵ The *Recommandation nr° 12* of the final *Rapport* of the works of the Commission (*op. cit.*, p. 28; on the whole there are 33 recommendations in the text) states: “la Commission recommande que l’État et les organismes publics et parapublics soient tenus de considérer, en priorité, l’utilisation de bâtiments religieux à caractère patrimoniaux avant de construire ou de louer de nouveaux locaux”.

²⁶ See **ASSEMBLÉE NATIONALE DU QUÉBEC - COMMISSION DE LA CULTURE**, *Croire au patrimoine religieux du Québec. Rapport*, cit., pp. 26-27.

²⁷ To this effect, the final *Rapport* of the Commission highlights that the *Québec* law for the protection of the cultural heritage protects the buildings “de très grande valeur patrimoniale tandis que l’objectif que poursuit la Commission est de protéger le plus grande nombre possible de bâtiments à vocation religieuse”. Therefore it proposes the introduction by law of a “*mécanisme d’aliénation de tous les bâtiments à vocation religieuse, incluant les cimetières*”, made up of three elements: 1) a public declaration (*avis public*) on behalf of the owner regarding his intention to sell or demolish the building. Up to twelve months from this declaration, any interested party may enter into negotiations with the owner, at the end of which the latter should make public the terms of the transaction; 2) the final settlement should be anticipated by a 60 days notice for the public authorities to exercise the “*right of first refusal*” and purchase the building at the same conditions defined in the agreement; 3) the setting up of a “*processus de consultation publique*”, organized by the municipal authorities, within 90 days from the *avis public* to ensure that all the citizens are aware of the value and potentials of the building (ASSEMBLÉE NATIONALE DU QUÉBEC - COMMISSION DE LA



All these different situations, which have been determined by the historical evolution of the single countries, seem to corroborate the fact that the Code of canon law of the Latin Church gives scant recommendations on the issue of churches desertion, thus confirming the propriety of the choice of delegating to each National Episcopal Conference the task of issuing relevant guidelines.

3.3 - United States of America

In the United States, it is the First Amendment of the Constitution, in virtue of its clause on separation, which tends to exclude the legitimacy of public ownership of the places of worship. These places traditionally belong to the respective religious communities on the basis of a common law which grants ample space to religious freedom. Until recently the religious institutions have coped without difficulty with the costs of maintenance and preservation of their estate. These costs were covered thanks to the donations of the faithful and the proceeds of the many humanitarian activities and organizations managed by the religious denominations (schools, universities, hospitals, etc.), which benefit from substantial fiscal exemptions too.

Specifically, in line with constitutional provisions or legal decisions dating for the most part to the nineteenth century, all States grant to religious groups, and their philanthropic organizations, an exemption from property tax²⁸. According to the activity carried out, a distinction is made between *charitable use exemptions* and *religious use exemptions*. However this distinction is not so sharp and varies from State to State²⁹.

Of this exemption, benefit first and foremost the worship sites, generally according to the following two conditions: a) that their use for religious purposes ("*devoted to religious uses*" or "*used for religious purposes*") is "*real*" or "*actual*" (however the majority of the States extends

CULTURE, *Croire au patrimoine religieux du Québec. Rapport*, cit., pp. 28-29).

²⁸ On the subject see **W.W. BASSETT**, *Religious Organizations and the Law*, vol. 2, West Group, St. Paul (Mn), 2003, pp. 10-61 ss.

²⁹ **W.W. BASSETT**, *Religious Organizations and the Law*, cit., pp. 10-70. In general there is a tendency to restrict the exemptions for religious use and a parallel trend to extend those offered to philanthropic activities ("*charitable use exemptions*"). "Some courts have limited religious use exemptions to the sanctuary or the actual building in which worship services are conducted, thereby forcing the churches to seek charitable use exemption for many of their properties. At the same time, many courts have broadened the definition of charitable use to include a variety of forms of religious education, catechization, fellowship, and recreation, mission work, communal living, and auxiliary services in support of religious groups".



the exemption even to buildings still in construction, or recently purchased, and already destined to such purposes; b) that the buildings belong to a religious community (but, in a minority of States, the exemption is extended even to privately owned buildings rented to religious communities for worship use). On the basis of the first condition, the fiscal exemption is generally withdrawn from buildings which are – even if only in practice – no longer used for religious purposes (“*abandoned or unimproved property*”). Only in a few States the jurisprudence continues to grant exemption even for a mixed or partial use for religious purposes³⁰.

In recent years, however, a series of judicial events have laid a burden on the finances of the Catholic Church, due to both the effect of the heavy penalties inflicted to dioceses for the refund of damages, caused by the penal responsibilities of some priests, and to the parallel weakening of the trust of the faithful with the subsequent reduction of donations and offerings to its institutions. In this new scenario, marked by the urgent need to trim down expenses, even the desertion of some churches, in some States, proves to be unexpectedly problematic, the attention being drawn on the fiscal implications of such decisions.

In some dioceses, the ecclesiastical authority has in fact proceeded – in light of new pastoral plans, entailing the suppression of old parishes – to the closure of some churches in the urban centres. The churches have then been assigned not to the diocese, as it was usual practice in the past³¹, but rather to those parishes left on the territory. However this has determined both the loss of the fiscal exemption linked to their real worship destination and, in absence of a different use, to a rapid increase of the fiscal charges on the parishes, laying heavy management costs on the respective communities which figure today as their title-holders. This situation does show how sensitive the whole issue is and how urgently it requires to be solved having in mind its various legal and pastoral

³⁰ W.W. BASSETT, *Religious Organizations and the Law*, cit., pp. 10-64 ss.

³¹ This practice was confirmed in *Roman Catholic Archdiocese of Newark v. East Orange City*, 18 N.J. Tax 649 (Super. Ct. App. Div. 2000), where the issue of the continuing fiscal exemption of the buildings of two suppressed parishes had been dealt with. As a result of the suppression of the parishes, the property of their respective buildings had been transferred to the Archdiocese. In each church, mass was celebrated once a week; meetings for priests and basket classes for the youth were held in the annexed buildings, whilst some rooms were used as archives for ecclesiastical documents and as deposits for different kinds of material. The State Tax Court decided, rejecting the position of the Municipality, that the buildings continued to be utilized “*actually and exclusively*” for purposes subject to fiscal exemption, and were regarded necessary (“*reasonably necessary*”) for the religious mission of the Archdiocese.



implications³².

4 - The situation in Italy

In Italy, the issue of deserted churches presents unique features too. This is first of all due to the incomparable dimensions of the religious heritage spread across all the national territory, and to its extraordinary historical-artistic value, which makes it a major tourist attraction at the international level. However, the legislative context offers a series of conditions which makes the situation in Italy less preoccupying than the one witnessed in other countries.

4.1 - Ownership of the churches

First of all, the ownership status is less unbalanced.

It is well known that in Italy, due to complex historical events dating back to the Napoleonic occupation and to the legislation of the unification period (1848-1871), the property of the churches – in particular those which have a monumental character and are of historical-artistic interest, that is the great majority of the national cultural heritage – is owned by the State, through the *Agenzia del Demanio*³³ and the *Fondo Edifici*

³² On the subject see J. TOKASZ, B. MEYER, *Parishes facing big tax bills for churches closed by Diocese of Buffalo. Tax-exempt status will be in jeopardy* (September 16, 2007), in <http://www.buffalonews.com/home/story/163697.html>.

³³ According to Italian law, the churches owned by the State, given their cultural richness, are for the most part subject to a regime of absolute (art. 54, decree. n. 42/2004) or relative inalienability. The transfer of ownership is potentially allowed only with the previous authorization of the Ministry and on condition that it “ensures the protection and positive reception of the treasures and, in any event, does not ostracize their public access”. In addition, it must also point towards a “*destination of uses compatible* with the artistic and historical nature of the buildings and such that it does not cause damage to their preservation” (art. 55, cit.). If owned by the State and used as places of worship (“*Agenzia del Demanio*”) the law foresees their concession in use to ecclesiastical entities “free of charge and without taxation”, while the maintenance and restructuring expenses are born by the beneficiary (art. 2, paragraph 4, law April 2, 2001, n. 136, and art. 23 ss., D.P.R. September 13, 2005, n. 296). In the case of “buildings such as *abbeys, convents and monasteries*”, these “can be given or rented in favour of monastic and religious orders exclusively for religious, welfare, or philanthropic activity or, in any event, for an activity connected with the prescriptions of the monastic charter” against a payment of a nominal annual rent (equal to 150 Euros). Further information see CONFERENZA EPISCOPALE ITALIANA. COMITATO PER GLI ENTI E BENI ECCLESIASTICI, Circolare n. 34. *Applicazione agli enti ecclesiastici del “Regolamento*



di Culto (F.E.C.)³⁴, thus enjoying a status of absolute or relative inalienability which guarantees their prior destination to worship as well as their concession at no charge to ecclesiastical entities³⁵ and the Church –

concernente i criteri e le modalità di concessione in uso e in locazione dei beni immobili appartenenti allo Stato”, approvato con decreto del Presidente della Repubblica 13 settembre 2005, nr. 296, in www.chiesacattolica.it. On the regulations of the churches owned by the State see **C. CARDIA**, *Ordinamenti religiosi e ordinamenti dello Stato. Profili giurisdizionali*, il Mulino, Bologna, 2003, p. 185 ss.

³⁴ A large number of monumental churches of great historical-artistic value, located especially in the centre-south of the peninsula, (amongst which approximately six hundred pre-cloistered churches), presently belong to the “Fondo Edifici di Culto” (F.E.C.), a sort of State entity administered by the Ministry of Interior Affairs, which has the specific and prevalent mission of looking after – with its own profits and the incomes of an annual governmental contribution – the “preservation, restoration, protection and appraisal of the places of worships” entrusted to it (art. 58, l. cit.), and originally belonging to the religious and conventual’s orders suppressed by the laws of the XIX century. On the subject see Ministero dell’interno. Direzione Generale Degli Affari Dei Culti (a cura di), *Il Fondo Edifici di Culto. Chiese Monumentali, storie, immagini, prospettive*, Roma, 1997. On the historical origin of the “Fondo Edifici di Culto” see **G. DALLA TORRE**, *Il Fondo per il culto. Ascesa e declino di un Istituto giurisdizionalistico*, ibid., p. 9 ss. On the juridical nature and internal structure of the Fondo see **F. FALCHI**, *Il Fondo Edifici di culto*, in I. Bolgiani (a cura di), *Enti di culto e finanziamento delle confessioni religiose. L’esperienza di un ventennio (1985-2005)*, il Mulino, Bologna, 2007, p. 135 ss. The buildings of the Fondo enter for the most part in the class of cultural riches; hence they are subject to a regime of inalienability, whilst the remaining belongs to the class of untouchable goods: all of them are subject to a limited destination use as per art. 833, paragraph 2, civil code. (on the subject see **F. FINOCCHIARO**, *Il Fondo Edifici di culto secondo la legge del 20 maggio 1985 n. 222*, in Ministero dell’interno. Direzione Generale degli Affari di culto (a cura di), *Il Fondo Edifici di culto*, cit., p. 27). This does not exclude that, with the previous consent of the ecclesiastical authority and with due respect to worship, outside of the religious celebrations timetable, or utilizing one part only of the building – for example those where artistic works are located or other prestigious rooms (i.e. chapels, sacristies, crypts) – this may be used for concerts, exhibitions or visits. For these churches, the hypothesis of their desertion is prohibited by the present laws, which oblige the Fund to carry out its institutional ends (art. 58, cit.) and permit the sale only of those “buildings set for private residential use” (art. 65, l. cit.).

³⁵ In the recent past, the hypothesis of the transfer of the churches of the F.E.C. back to the ecclesiastical authorities on the basis of the Concordat of 1929 (i.e. art. 29, paragraph a, and the art. 6, l. nr. 848/1929) – with which the State had accepted to recognize the (not-yet acknowledged) juridical status of the public churches open to worship, including those once belonging to the suppressed ecclesiastical entities, prescribing for them the transfer to the ecclesiastical authority (art. 6, l. nr. 848/1929) – has been much debated, at times heatedly. Art. 73 of the law nr. 222/1985 has basically kept this regulation, stipulating that those transfers, prescribed by the laws of the Concordat, “which have not yet been executed, be disciplined by the existing legislative dispositions”. [On the complex issue of interpretation raised by art. 73 of the law nr. 222/1985 see the punctual analysis of **F.E. ADAMI**, *Cessioni e ripartizioni*, in I. Bolgiani (a



which is title-holder via the multiplicity of ecclesiastical entities (for the most part dioceses, parishes, and religious institutes) spread all over the national territory.

Therefore, the substantial maintenance and preservation costs of such significant treasure, almost entirely made up of buildings of historical-artistic value and thus subject to public protection, are distributed amongst different subjects. In this way, those situations of almost exclusive concentration of their ownership in the hands of only one subject – as it is the case of the public finance in France, or of the religious communities in Québec (and the United States) – are avoided from the start. Such situations, in fact, make the perspective of the desertion of the churches, by way of demolition or expropriation, inevitably more common.

4.2 - Financial aspects

The presence in the Italian legislation of a specific and well functioning channel of public financing, stipulated by the Concordat, should also be taken in consideration. This is the “8 over 1000 percentage” of the income tax return (*otto per mille dell'IRPEF*) which is annually distributed amongst the State, the Catholic Church and other religious denominations on the basis of the choices expressed by the tax payers on their income tax return form. These funds are used, along with those coming from private donors (i.e. bank foundations³⁶), in support of initiatives, projects of preservation

cura di), *Enti di culto e finanziamento delle confessioni religiose. L'esperienza di un ventennio (1985-2005)*, cit., pp. 109 ss.]. Thus legitimatizing – according to the jurisprudence of the Council of State (see Cons. Stato, section I, October 18, 1989, nr. 1263, in *Dir. eccl.*, 1989, I, 535 ss.) – the transfer of the buildings of worship, belonging to the Fondo and ever-since destined to religious activities, to the parish on the basis of the new Concordat. This interpretation has raised criticisms on the part of those worried about the destiny of other cultural riches of historical-artistic value annexed to the buildings of worship deserted by the Fondo, which would fall under the same regulation (see **F. FINOCCHIARO**, *Diritto ecclesiastico*, 8^a ed., Zanichelli, Bologna, 2000, p. 346 ss.). However, these criticisms – which signal a problem to be faced within the norms related to the maintenance of cultural works, rather than by the Concordat – seem to be now overcome. Rather, the potential transfer of these buildings to the ecclesiastical authorities does require, today, on the part of the latter, a deeper evaluation of its assets, given the heavy financial burdens which it would entail.

³⁶ According to laws pertaining to this matter (l. nr. 461/1998; Legislative decree. nr. 153/1999), *Bank Foundations* are an expression of civil society and instruments for the promotion of the Third sector. Their fields of intervention include “religion and spiritual development” and “art, activities and cultural heritage” (art. 1, paragraph 1, lett. *c-bis*,



and restoration of buildings of worship under the risk of decay, thus preventing their desertion. In addition there are funds which are born directly by the public finances to preserve the churches belonging to the State, or to other public institutions.

The proceeds of the income tax *otto per mille* which belong to the Catholic Church are used by the CEI (Conferenza Episcopale Italiana), as provided by the law, also to satisfy the “worship requirements of the population” (art. 48, l. nr. 222/1985), which comprise the preservation and maintenance of the places of worship owned by the Church³⁷.

During the last few years, even the proceeds of the income tax *otto per mille* belonging to the State – which, as the law prescribes, can also be used for the “preservation of cultural heritage” (art. 48, l. nr. 222/1985) – have been sometimes destined to the funding of projects aimed to preserve churches with an historical-artistic value.

In conclusion, it is clear that in Italy the entire heritage represented by churches, notwithstanding the ownership status, is considered part of the national heritage according to article 9 of the Constitution. As such it is also supported and preserved by public funds directly accrued through the income tax return.

4.3 - Legal protection of the destination bond

With respect to the utilization of these buildings, and considering their being instrumental to the exercise of a right granted by the constitution, such as the right of religious freedom³⁸ (art. 19 Const.), the Italian

D.Lgs. n. 153/1999. On the subject see **F. VECCHI**, *Fondazioni bancarie, libertà sociali e finalità di interesse religioso*, in *Dir. e religioni*, 2008/1, I, p. 506 ss.). Today, these Foundations are the major financial supporters of restoration projects of important church complexes in many Italian cities, especially in the Centre-North of Italy – amongst whose beneficiaries are also some of the churches of the “Fondo Edifici di Culto”. They also promote preservation works of churches and parishes (sometimes anticipated by a property acquisition so as to destine them to a more appropriate use) along a model used in German speaking countries and already used in South Tyrol, where the Foundations of the local rural banks (*Raiffeisenkassen*), on the model of the great German foundations of private origin, contribute to the preservation of small mountain chapels, with the view of promoting tourism in the area.

³⁷ On the subject see **C. CARDIA**, *Otto per mille e offerte deducibili*, in I. Bolgiani (a cura di), *Enti di culto e finanziamento delle confessioni religiose. L'esperienza di un ventennio (1985-2005)*, cit., p. 225 ss.

³⁸ On the matter, reference to the decision n. 195 of the Constitutional Court, dated April 27, 1993 (*Foro it.*, 1994, I, col. 2986 ss.) is of fundamental importance. Even more so is the earlier sentence nr. 59/1958 of the Constitutional Court (*id.*, 1958, I, col. 1778). On



legislation foresees that: those buildings destined to the public exercise of Catholic worship and, today, also those “ destined to the public exercise of Jewish worship” (art. 15, paragraph 1, l. March 8, 1989, nr. 101) – even if owned by private individuals – are subject to a worship destination bond (*deputatio ad cultum*) which still holds in case of alienation, “until their fixed destination does not cease in conformity with the respective laws” (art. 831, paragraph 2, civil code), thus granting to the religious authorities every decision on the matter³⁹.

This juridical regime is particularly favourable from both a religious as well as a civil perspective. This regime reflects a tradition dating back to the nineteenth century legislation and, perhaps, even back to the time of the absolute Monarchies which aimed to protect – initially by means of the juridical instrument of negative easement typical of the separatist period and then by means of a legal obligation similar to the French model, introduced in the civil code of 1942 – the permanent destination to worship of the churches, even if their ownership had meanwhile been transferred to the State (former convents, etc.) or to private individuals⁴⁰.

Paradoxically, a law designed in the past to nationalize a great majority of the ecclesiastical estate, in line with a political majority highly hostile to the Church, proves nowadays useful for the wise management of the Church heritage, either publicly or privately owned, avoiding the risk of hasty desertion or change-of-use policies. In fact this law guarantees the legal protection of the destination bond of those churches still open to the public⁴¹ whilst safeguarding the historical and cultural

the subject see **COUNCIL OF EUROPE - PARLIAMENTARY ASSEMBLY**, *Resolution* 916 (9 may 1989) *on redundant religious buildings*, cit., n. 5.

³⁹ See **C. MINELLI**, *La rilevanza giuridica della “Deputatio ad cultum” (art. 831 Codice Civile)*, in J.I. Arrieta (a cura di), *Enti ecclesiastici e controllo dello Stato. Studi sull’Istruzione CEI in materia amministrativa*, Marcianum Press, Venezia, 2007, p. 257 ss.; **A. BETTETINI**, *Gli enti e i beni ecclesiastici. Art. 831*, in *Il Codice Civile. Commentario*, Giuffrè, Milano, 2005, p. 162 ss.

⁴⁰ See **F. ZANCHINI di CASTIGLIONCHIO**, *Edifici di culto*, in *Enc. Giur.*, Treccani, Roma, XII, 1989, pp. 1-2.

⁴¹ On this matter, see the sentence of January 5, 1999, of the Court of Lecce, section I, in *Quad. dir. pol. eccl.*, 3/2000, p. 713 ss., according to which, in virtue of art. 831, paragraph 2, c.c., churches dedicated to Catholic worship may not be given in allowance for the old-Catholic cult by the Municipal authority, in the case at hand their owner, in absence of a specific agreement with the responsible, Catholic, ecclesiastical authority - “notwithstanding the degree with which the latter has made use of the sacred place in question”. On the subject see **G. LEZIROLI**, *Edifici di culto cattolico*, in *Dir. eccl.*, 1994, I, p. 869 ss. According to **C. CARDIA**, *Manuale di diritto ecclesiastico*, cit., pp. 414-415, it is not sufficient – for the civil protection of *deputatio ad cultum publicum* – that the site be consecrated or blessed by the ecclesiastical authority, but rather *an effective destination to*



identity of vast areas of the territory (including urban areas) and of small communities.

In the second place, article 5 of the Concordat with the Catholic Church (l. nr. 121/1985; a similar provision has been incorporated in the agreements with other religions) forbids the occupation, the desertion and *demolition* of the “buildings open to worship” “except for safety reasons and with the previous agreement of the competent ecclesiastical authority.” In this manner the ecclesiastical authority becomes the primary interlocutor in relation to decisions pertaining to the present and future use of a church and the land on which it is located. Furthermore, the interest of the entire community in the preservation of the building – in accord with “the religious requirements of the population”, whose estimate is left to the ecclesiastical authority to judge (art. 5, paragraph 1, l. nr. 121/1985)⁴² – is juridically protected.

4.4 - Churches as cultural heritage

The Italian law on the protection of cultural heritage – one of the more advanced in the international arena and in line with specific constitutional provisions (art. 9 Cost.)⁴³ – acquires a special value in the context of the juridical status of buildings of worship within the Italian jurisdiction.

In this field, furthermore, it is important to avoid the narrow view which tends to consider churches and other places of worship as subject to a merely static, conservative action, just like any other building with historical or artistic value⁴⁴.

public worship is needed, with concrete evidence of its use by the population.

⁴² According to administrative judge, a precondition for the application of art. 5 of law nr. 121/1985, is the same *deputatio ad cultum* of the building, which must result from a proper ecclesiastical documentation to be “drafted in parallel to its *dedicatio* or *benedictio*” (see State Council, section IV, sentence May 10, 2005, nr. 2234, in www.olir.it). This situation explains the recommendation – included in the recent Instruction of the CEI to the diocesan Bishops (nr 122) – to comply hastily with all legal requirements and to proceed prudently in those decisions pertaining to a reduction to secular use of a church.

⁴³ See G. DALLA TORRE, *Lezioni di diritto ecclesiastico*, cit., pp. 282 ss.; F. MERUSI, *Beni culturali, esigenze religiose e art. 9 della Costituzione*, in AA. VV., *Beni culturali di interesse religioso*, cit., p. 21 ss.

⁴⁴ See C.E.I., *I beni culturali della chiesa in Italia. Orientamenti*, cit., n. 40: “The cultural ecclesiastical goods should not only be considered as an intangible cultural heritage to be preserved with criteria proper to a museum. In their own way, they are living realities, changing in line with the liturgical needs of the Church which, in its effort to keep up the dialogue with society, is in a state of permanent adjustment.” On the limits



In both the urban and rural Italian landscape, churches, monasteries, or convents, have represented and still represent important association centres and essential points of reference for the historical and civil identity of entire villages, or urban areas, which have historically developed around or nearby them. The survival of parts of the urban fabric and of small communities in remote mountain areas, or countryside, depends on their vital presence and their openness to worship⁴⁵. It is therefore in the interest of the civil community itself to preserve and valorise such places, not only because they represent a cultural heritage – and, for the religious community, a testimony of faith – but also because they represent important factors of cohesion, dynamism and vitality in the city context, in relevant communities and in the entire landscape, thus meeting the natural tourist vocation of our country as well⁴⁶.

The status of *deserted, or in the process of being deserted, worship places* must be contextualized within this specific normative framework. The status of these buildings is an issue of great significance in light of a protection, appraisal and public use, able to avoid the risks of further decay and abandonment which in turn have a negative impact – for the above mentioned reasons - on the same civil community and its identity.

and risks related to a merely conservative protection of cultural goods, with specific reference to cultural goods of religious interest, read **G. DALLA TORRE**, *Lezioni di diritto ecclesiastico*, cit., pp. 276-277.

⁴⁵ This more nuanced perception of the interests laying behind the protection of cultural goods of religious interest has been voiced by the Agreements (“Intese”) with the other religious denominations: more specifically those with the *Unione delle Comunità ebraiche Italiane* and with the *Tavola Valdese* (Valdensian Table) which represent un-fortuitously the two religious communities historically most rooted in Italy apart from the Catholic Church. In the Agreements, the field of cooperation with the State is identified in the protection and valorisation “of the goods belonging to the historical, artistic, cultural, environmental, architectural, archaeological, (...) and books heritage of the Italian Jewish community” (art. 17, l. March 8, 1989, n. 101), or else the valorisation of the “cultural goods which are part of the historical, moral, and material heritage of the churches belonging to the Valdensian Table” (art. 17, l. August 11, 1984, nr. 449), thus moving well beyond the protection of the worship needs of the respective communities. See **D. TEDESCHI**, *Tutela e valorizzazione del patrimonio culturale dell’ebraismo italiano*, in G. Feliciani (a cura di), *Beni culturali di interesse religioso*, cit., p. 77 ss., and **G. LONG**, *Tutela e valorizzazione del patrimonio culturale nelle intese con le confessioni religiose diverse dalla cattolica*, *ibid.*, p. 89 ss.

⁴⁶ See **COUNCIL OF EUROPE - PARLIAMENTARY ASSEMBLY**, *Resolution 916* (May 9, 1989), cit., where it says that “a church or any other major religious building is often the focal point and central feature of a community and a local landmark”, therefore “sufficient time and encouragement should be given to such communities to rediscover a common interest and future role for such buildings” (n. 8).



A) *The common legislation on the protection of cultural heritage*

In the first place, parts of these riches have been historically considered “cultural goods”, whenever they constitute an “artistic, historical or archaeological interest” or are defined “testimonies of civilization” (art. 2, Legislative decree, January 22, 2004, nr. 42 - *Codice dei beni culturali e del paesaggio*) by the ministerial entities. In this case they will benefit of all the provisions of the preservation and protection laws pertaining to “cultural goods” and they will be subject to the principles relative to their use and valorisation, to be developed by the regional legislations⁴⁷.

Some of these buildings, given their position in the landscape and because of their “historical, cultural, natural, morphological and aesthetic features”, may be also included in the category of “environmental goods” and, as such, be regarded as subject to the regional legislation for protection of the landscape and areas of public interest (art. 134, D.Lgs. nr. 42/2004).

However the majority, if not all, of the churches of historical value spread all over the national territory are classified nowadays as “cultural goods of religious interest” and – “if belonging to entities and institutions of the Catholic Church, or other religious denominations” – are subject to a protection regime which provides for, beside the operative duties of the Ministry of cultural affairs as well as of the Regional bodies, the necessary agreement of the religious authority “regarding the requirements of worship” (art. 9, D.Lgs. nr. 42/2004)⁴⁸.

B) *The Concordat and the protection of cultural heritage of religious interest*

In this context, and on the basis of art. 12 of the Concordat with the Catholic Church, which enounces the principle of the collaboration “for

⁴⁷ On the subject see **F. MARGIOTTA BROGLIO**, *Commento all’art. 9. Beni culturali di interesse religioso*, in M. Cammelli (a cura di), *Il codice dei beni culturali e del paesaggio. Commento al decreto legislativo 22 gennaio 2004, n. 42*, il Mulino, Bologna, 2004, p. 96 ss.; **A. ROCCELLA**, *I beni culturali ecclesiastici*, in *Quad. dir. pol. eccl.*, 1/2004, p. 199 ss.; **A.G. CHIZZONITI**, *Il nuovo codice dei beni culturali e del paesaggio: prime considerazioni di interesse ecclesiasticistico*, in *Quad. dir. pol. eccl.*, 2/2004, p. 402 ss.; **M. VISMARA MISSIROLI**, *I beni culturali di interesse religioso dall’Accordo del 1984 al Codice Urbani*, in *Iustitia*, 2-3/2004, p. 310 ss.

⁴⁸ On the notion of “cultural goods of religious interest”, see **G. FELICIANI**, *Introduzione*, in M. Madonna (a cura di), *Patrimonio culturale di interesse religioso in Italia. La tutela dopo l’Intesa del 26 gennaio 2005*, cit., p. 7 ss.; **F. MARGIOTTA BROGLIO**, *Art. 9. Beni culturali di interesse religioso*, cit., p. 96 ss.



the protection of historical and artistic heritage"⁴⁹, the Agreement of January 26, 2005 between the Ministry of cultural affairs and the President of CEI (Italian bishop Conference)⁵⁰ foresees, in light of an application of Italian law sensitive to religious scruples, a series of principles relative to the protection of cultural goods of religious interest, which compel both sides, within the range of their respective responsibilities and financial opportunities, to adopt specific protection instruments mainly in the following areas:

a) *Filing and cataloguing* of personal-property and real estate of cultural value, qualified as "the basic foundation of every subsequent intervention", and the necessary premise for a reliable kind of planning, both at the national and local level, of concrete interventions of restoration of dismissed or, about to be deserted, worship places⁵¹;

b) *Interventions for the preservation* of cultural goods, for which it is foreseen that, in case they be conducted on worship places still open to the public, they will be planned and executed "with the previous agreement, on the worship requirements, between the State and ecclesiastical authorities responsible of the territory" or according to the directives stipulated at the level of the central authorities⁵². Thus aiming at

⁴⁹ On the Concordat dispositions on the matter see **G. PASTORI**, *I beni culturali di interesse religioso: le disposizioni pattizie e la normazione più recente*, in *Quad. dir. pol. eccl.*, 1/2005, p. 191 ss.; **G. BONI**, *Gli archivi della Chiesa cattolica. Profili ecclesiasticistici*, Giappichelli, Torino 2005; **F. FINOCCHIARO**, *Le norme pattizie sui beni culturali di interesse religioso e il sistema delle fonti*, in G. Feliciani (a cura di), *Beni culturali di interesse religioso*, cit., p. 41 ss.

⁵⁰ See D.P.R. February 4, 2005, nr. 78. On the specific contents of this Agreement see **C. CARDIA**, *Lo spirito dell'accordo*, cit., pp. 29 ss.; **A. ROCCELLA**, *La nuova Intesa con la Conferenza episcopale italiana sui beni culturali d'interesse religioso*, in *Aedon*, 1/2006, in www.aedon.mulino.it.

⁵¹ In respect to this, it is worth mentioning the important "agreement" (dated March 8, 2005) between the Ministerial Department for cultural and environmental heritage, on one side, and the CEI National Office for the ecclesiastical cultural heritage, on the other. The agreement covers the electronic procedures to be utilized by the ecclesiastical authorities for the request of verification of the cultural interest of the real estate. It also sets forth, amongst other things, the subscription of specific *agreements* amongst all concerned authorities on the "quantity, priority criteria and periodicity of the dispatch of the requests" for the verification of the cultural interest of the real estate of the ecclesiastical entities located in the respective territory, including those buildings which are more exposed to decay and abandonment. In this manner making a tight cooperation possible on the territory, with the aim of monitoring and restoring an important part of the cultural heritage of the country.

⁵² More in general, on the risk of emphasizing safety and protection concerns over those relative to the use and enjoyment of the ecclesiastical cultural heritage, having the frequent effect of leading to its abandonment see **C. CARDIA**, *Tutela e valorizzazione dei*



avoiding a prolonged closure of the churches, imposed by restoration projects incompatible with the regular use of the worship building on behalf of the faithful, which in some instances, in the past, have marked the beginning of a process of decay and desertion even worse than the one which the restoration project had aimed to fix⁵³;

c) *Safety* of those cultural goods which the legislative text classifies of “primary importance.” To this scope, the law of the Agreement states that

“the ministry and the CEI will ensure, each within the range of their respective responsibilities and financial opportunities, adequate measures of safety, in particular for those buildings open to the public and for the goods more exposed to the risk of theft, decay and desertion”,

pointing clearly to the situation of those churches which have already been dismissed or are in the process of being deserted;

d) *Access and visits* to these cultural goods “are guaranteed” on condition that they take place with due “respect of religious scruples.” It is clearly implied that these commitments will be met according to the respective responsibilities and financial opportunities of the institutions and entities involved, opening up also to the role played by civil society and volunteer work.

The collaboration between the Ministry and the ecclesiastical authorities will also extend to the financial level by means of participation to the realisation of shared interventions and initiatives (art. 3). In addition, ample opportunities of collaboration are foreseen between the competent authorities of the two jurisdictions, at the local level, where the regional authorities today hold great decision power on the matter⁵⁴.

beni culturali di interesse religioso tra Stato e Chiesa cattolica, cit., p. 71.

⁵³ Avoiding the decay and abandonment of cultural heritage (subject of the Agreement) is also the objective of the regulation concerning “natural catastrophes”, like earthquakes or floods, which are unfortunately frequent in some regions of Italy. In this event, it is foreseen, amongst other things, that the diocesan bishop conveys the responsible superintendent “any helpful information aimed at facilitating a quick estimate of the damages and a well-thought plan relative to the interventions which take precedence on the basis of the requirements of worship” (art. 6, paragraph 5).

⁵⁴ Within the scope of their responsibilities, some Regional Authorities have already reached agreements with the respective local Episcopal Conferences in order to promote the valorization and ample access to the cultural heritage of religious interest. Thus offering additional opportunities for the recovery of an important portion of our historical-artistic legacy, which also constitutes a major touristy attraction of our country.



In short, one can conclude that, whilst not entering into the explicit contents of the Agreement, the subject of the deserted churches and places of worship is implicitly touched in many of its dispositions – the prevention and fight of this phenomenon being one of its main objectives, in line with the “*ratio*” of the Italian legislation on the matter of preservation and valorisation of this heritage⁵⁵.

4.5 - Fiscal considerations

At last, we should also mention, considering the problem in its entire complexity, the potential fiscal implications deriving from the change of use of a building of worship, simply due to its closure to the public, or to its new destination.

In the Italian jurisdiction, the pieces of property “exclusively destined to the exercise of worship” and “their annexes”, do not produce income. Hence they are exempt from taxes usually applied to juridical persons, on condition they are not rented out and their worship use is “compatible with the dispositions contained in the artt. 8 and 19 of the Constitution” (art. 33, paragraph 3, D.P.R. nr. 917/1986).

Same exemption applies to those pieces of property for which “licenses, permissions, and authorizations for renovation, restorative reclamation or construction restructuring – limited to the validity period of the provision, during which the property is in any case unused (*ibid.*)”, have been obtained.

Furthermore the buildings of worship, their annexes and other real estate belonging to ecclesiastical entities, as those belonging to non-profit entities, are exempt from payment of the ICI (“*imposta comunale sugli immobili*”) tax, if “exclusively destined to worship” (art. 7, paragraph 1, lett. d, D.Lgs. nr. 504/1992). This clause applies also to those buildings not primarily destined to commercial activities, if “exclusively destined to the management of care for the needy, health-care, educational, cultural, recreational, and sport activities, as well as to the activities stipulated in art. 16, letter a), of the law nr. 222 of May 20, 1985” (art. 7, paragraph 1, lett. i, *ibid.*), that is religious and worship activities (therefore not only worship-related but also pastoral-care related activities).

⁵⁵ On the subject see C. CARDIA, *Lo spirito dell'accordo*, cit., which illustrates the potential effect that the Intesa might not only have in relation to the increase in awareness and rationalization of the historical-artistic heritage of the Church but also in order to a revaluation of its entity, features and better use, in light of “strategic decisions” on the disuse or change of destinations policies of the ecclesiastical and cloistered buildings.



Therefore, any decision to appoint a building for activities different from the original – especially by means of a lease-agreement with third parties – may determine (even for the respective annexes) the total, or partial, loss of the tax exemptions, depending on whether the building is going to be destined to profit-making activities of a commercial nature (...) or to non-commercial activities like the ones above mentioned. In the latter case, the building will lose the total exemption from the tax imposed on juridical persons⁵⁶, whilst it will continue to retain exemption from ICI⁵⁷.

On the other hand, unlike what happens for instance in the United States, the simple closure to the public of a worship building, decided (either provisionally or *sine die*) by the ecclesiastical authority, does not invalidate the income (or property) tax-exemption regime, which in the Italian jurisdiction depends only on the destination of the building to worship – on condition that it be not rented to third parties – and not also on its persistent and effective opening to public worship, prescribed instead by art. 831, paragraph 2, of the civil code, for the *deputatio ad cultum* figure.

On second thoughts, it is this specific tax system, together with the income of the *otto per mille*, which constitute the conditions, in Italy, for a wise and prudent management of the church heritage, allowing the ecclesiastical authorities to face the problem of unused churches, having at their disposal sufficient time for the arrangement of new, either ecclesiastical or civil, church-destinations, and to plan for complex and demanding projects of restoration without the pressure of the high fiscal burden typical of real-estate property.

In fact, the introduction of a different tax system, linking the exemption only to the persistent and effective opening of the building to public worship, would represent a strong incentive to dismiss, sell, or rent the buildings on the part of the ecclesiastical authorities, setting off a

⁵⁶ In any case, the ecclesiastical entity recognized by civil law, in light of the equalization for fiscal reasons of the religious or worship ends and the educational or philanthropic goals (see art. 7, paragraph 3, l. n. 121/1985), should continue to benefit of the 50 % reduction on the income tax (art. 6, paragraph 1, D.P.R. n. 601/1973). On the different interpretations of this regulation, see **S. CARMIGNANI CARIDI**, *Il regime tributario dell'ente ecclesiastico*, in J. I. Arrieta (a cura di), *Enti ecclesiastici e controllo dello Stato. Studi sull'Istruzione CEI in materia amministrativa*, cit., pp. 211 ss., 224 ss.

⁵⁷ For further elaborations on the civil and fiscal regime pertaining to the annexed buildings and other ecclesiastical properties, see **CEI. COMITATO PER GLI ENTI E I BENI ECCLESIASTICI E PER LA PROMOZIONE DEL SOSTEGNO ECONOMICO ALLA CHIESA CATTOLICA**, *Circolare n. 32 – Cessione di locali e spazi pastorali a terzi per uso diverso*, Rome, May 10, 2002 (in www.chiesacattolica.it).



process of change in both the use and venture-speculation of the estate in important urban areas. This, on the other hand, would determine a great risk for the preservation of historical centres and for the protection of the cultural-historical identity of many villages and communities, of which churches make up often a fundamental component.

4.6 - The recent CEI Directive (2005)

Within this legal context, the most recent CEI Directive (2005) on administrative issues ("*Istruzione in materia amministrativa*") has adopted a more restrictive approach relative to the potential use of a church for activities other than worship⁵⁸.

Referring to the protection of worship-destination granted by the Italian State law, it states that

"the dedication of a church to public worship is a permanent fact which cannot be modified in time and space so as to allow for different activities. In fact, this would imply a violation of the destination bond which, as stated by art. 831 of the civil code",

guarantees – one reads in a previous passage – "the endurance of the worship bond (...) until the ecclesiastical authority decides for a reduction to profane use of the worship building" (nr. 124). This seems to be an implicit invitation to the bishops to avoid a formal decision in this direction, which might determine a failure on the part of the civil jurisdiction to protect worship-destination (see also what is stated in art. 5, l. nr. 121/1985).

The church must then be "at the exclusive disposal of the juridical person responsible for the religious office" and thus

"may not be subject to an agreement transferring rights, faculties, powers, ownership, or joint-ownership of the worship building to third parties; it may not be treated as an instrumental good for commercial activities, nor be in any way used for lucrative purposes" (nr. 128)⁵⁹.

⁵⁸ **CONFERENZA EPISCOPALE ITALIANA**, *Istruzione in materia amministrativa* (2005), Rome, September 1, 2005, Milan, 2006. Chapter IX of the document is entirely dedicated to the subject of the "places of worship". On this topic, see also **B.F. PIGHIN**, *Configurazione e gestione dei luoghi di culto*, in **AA. VV.**, *Enti ecclesiastici e controllo dello Stato. Studi sull'Istruzione CEI in materia amministrativa*, cit., p. 117 ss.

⁵⁹ The former version of the "*Istruzione in materia amministrativa*" dated 1992 [in *Enchiridion della Conferenza Episcopale Italiana*, 5 (1991-1995), Bologna, 1996, pp. 357-360]



In short, for the “*Istruzione*”, the worship destination-bond has an exclusive character and it would preclude, until its effectiveness, any other use or activity, except for those – like a concert performance – potentially authorized in writing by the Ordinary *per modum actus* (nr. 130).

The exclusion of any commercial or lucrative purposes – which are instead allowed in borderline cases by other episcopates – is thus reiterated, as foreseen in the 1992 *Guidelines*. On the other hand, the permission allowed in the *Guidelines* – to use a church no longer destined to liturgical service “for other compatible activities, such as cultural events”, or to subdue the church to a “temporary change of destination”, as an alternative to its desertion – seems to fail. Only an irrevocable reduction to profane use, with concomitant cessation of the destination bond, would allow the utilization of the building for other activities or goals.

This more severe line of conduct is most likely dictated, at the pastoral level, by the concern to avoid potential openings to mixed or non-denominational use of the churches⁶⁰, which is regarded to be the effect of a mistaken approach to ecumenical and interreligious dialogue. Such openings could lead the believers to draw syncretistic conclusions, or to form a secular vision of the churches⁶¹, as mere places of tourist attraction.

– which anticipated by a few months the CEI document on “*I beni culturali della chiesa in Italia. Orientamenti*” (December 1992) – on the subject of the churches’ use, only recalled the responsibility of the diocesan bishop according to canon law, the text of can. 1210 c.i.c., art. 5 of the revision Agreement and art. 831, paragraph 2, of the Civil Law, defined as “most relevant civil norm regarding churches”. In case the owner of the church is distinct from the community of the faithful which makes use of it and celebrates the liturgy, this provision stated “that it is required a treaty between the parties for the concession of use of the worship building at the conditions to be agreed upon” (n. 90-92).

⁶⁰ The “*Istruzione*” limits itself to discouraging “an occasional mixed use of the parish buildings, that is the concession of the worship and parish rooms to third parties, upon compensation, for single initiatives (such as birthday parties, condominium assemblies, or civic districts committees)”, for insurance reasons, that is because these uses would “jeopardize the validity of the insurance coverage for activities directly related to the institutional mission of the parish” (nr. 117).

⁶¹ In line with this interpretation is the next paragraph of the “*Istruzione*”, entitled “*on access to the churches*” (nr. 129), which emphasizes how it is only in principle possible to separate the cultural dimension of a church from its religious dimension. De-facto “the two aspects are inseparable: in fact, the destination to worship constitutes the essence of the building and of the works of art inside hosted. The visit to a church requires an understanding of the values laying behind the worship practiced in the place; values which are also a witness to the life and history of the Church, demanding respect: in other words, churches are not only a sort of tourist attraction. In relation to the visit



Even worst, they could be perceived as a sort of subsidence to religious experiences which are apparently more vital and aggressive, thus favouring their diffusion⁶².

Such attitude might also be motivated by financial reasons, related first of all to the fiscal implications produced by the potential decision to destine a church to activities other than the institutional ones (albeit the present law would link the changes in taxation to the permanent cessation of the destination-bond, by decree of the ecclesiastical authorities, rather than to temporary or *sine die* provisions, like the closure to the public of the church, or its partial and temporary use for activities of cultural and social interest, which are not prohibited by art. 831, paragraph 2, c.c.).

In the second place, this approach seems to point to a precise strategy of the CEI – given the increasing shortage of clergy and the high maintenance costs of the big clerical heritage – to concentrate all preservation efforts on the churches owned by ecclesiastical entities, to be kept open for worship and to public services wherever possible, counting also the possibility of the potential cessation of the destination-bond – in case its costs become unbearable – for other private, or State-owned, churches designed to acquire a new destination-use⁶³.

and use of a church, the principle of free and equal access to all during the hours defined by the rector should be held steady.”

⁶² Cardinal Francis Arinze, President of the Pontifical Council for Interreligious Dialogue, with a letter addressed to the Bishops – dated February 26, 1992 – requested that the parish priests abide to the instructions of the local Ordinary for the potential temporary and provisional concession to the Muslim of parish rooms destined to secular use – however excluding the possibility of giving in allowance (as prescribed by Canon Law 1210 -1211) those sections of the building destined to worship, even if disused, so as to avoid puzzling the conscience of the Catholic believers. In fact the donation of deserted churches for Islamic worship can be perceived even by the Muslim as a defeat of Christianity and a victory of Islam – considering also that, according to an ancient normative tradition, these rooms, consecrated to Muslim prayer, would remain for ever an acquisition of the Islamic community.(see **T. NEGRI**, *Chiesa e Islam: alcuni nodi concreti*, in www.centro-peirone.it).

⁶³ The following two facts deriving from the system of relations with the State have most likely impacted on this recent orientation: on the one hand, the constant increase of funds deriving from of the “otto per mille”, which compels the CEI, also pressured by the government, to utilize a good portion of these resources to provide for the preservation and restoration of the churches owned by ecclesiastical entities, as well as to guarantee open and free access to the community of the faithful, in line with the best Catholic tradition (see **C. CARDIA**, *Otto per mille e offerte deducibili*, cit., p. 225 ss.); on the other hand, the willingness many times expressed by CEI, but up to now disregarded by the State, to accept back the former conventual’s churches now property of “Fondo Edifici di culto” (FEC), which could be restored and maintained with the increasing resources of the “otto per mille” (on the subject see **F. FALCHI**, *Il Fondo Edifici di culto*,



Besides, some of these are already subject to a mixed-use regime and to limited access – especially wherever tours to parts of the church are concerned – agreed with the ecclesiastical authority, in order to obtain a contribution for the preservation costs weighing on its owner.

For the Church, this is a rationale coherent with the property arrangements – in light also of the deprivations suffered in the past – and with the requirements put forward by a serious restoration planning. A rationale which requires the State to act according to its responsibilities in what concerns the preservation and protection of the cultural heritage of religious interest directly owned, especially in the centre-south, where there are unique traditions and popular devotions connected to these places.

It cannot pass unnoticed, however, that this position is based on a rather narrow interpretation of the canonic and civil regulations: an interpretation, that is, which seems to leave little space of assessment – on the part of the responsible ecclesiastical authorities – of other potential (partial or temporary) uses of the unattended church, left with high maintenance costs.

In fact, the Code of canon law clearly states that the sacred places lose their destination “if they have been greatly damaged or if *permanently* destined to profane use” by decree of the Ordinary or de-facto (can. 1212), whilst the reduction of a church to an acceptable secular use can be achieved only by the bishop when it can no longer be used for worship “*nullo modo ad cultum divinum adhiberi queat*” (can. 1222). Such a formulation, leaving this measure as a last resort (*extrema ratio*⁶⁴), seems not only to admit the temporary closure to the public of a church – wherever it is not possible to provide for its proper custody – but also to the possibility of its partial use for other activities and objectives (which are obviously acceptable for the place and do not jeopardize the exercise of worship). Thus avoiding the risk of abandonment and decay, resulting from its potential closure, which the French experience well exemplify.

Also the interpretation of art. 831, paragraph 2, of the civil code, received in the “*Istruzione*”, can create some ambiguity since it aims at equalizing the civil law protection of the worship-destination bond to a sort of absolutely non-modifiable status which even the religious authorities cannot resort unless in extreme cases, such as that of the reduction of the church to profane use. Whereas the Canon law (nr. 1210 e

cit., pp. 135 ss.).

⁶⁴ One can think of all procedural conditions to which the decision regarding the reduction of the church to profane use “for other compelling reasons” is subjected to, on pain of nullification (can. 1222, § 2).



1222 of the *Codex*) – also recognized by civil law – does not seem to preclude the possibility of a partial and/or temporary change of destination whenever authorized by the diocesan bishop⁶⁵. Not to count that the Italian jurisprudence has always considered that – for the buildings of worship not owned by the Church – the destination bond allows for inside activities different from those of worship, provided they are not incompatible with the sacredness of the place and that there is a previous agreement of the religious authority⁶⁶.

On this matter, the “*Istruzione*” appears more coherent with an authoritative doctrinal view which connects the civil bond not only to the dedication or canonic benediction of the building, but also to its *effective public worship destination*, which implies a concrete use of the temple by the population and a visible use for liturgy. Without the latter, the ecclesiastical authority would be required to adopt the canonic provision declaring the church devoid of “*deputatio ad cultum*” and to avoid opposition⁶⁷. Nonetheless, this concern makes sense only in relation to the privately owned churches, for which the permanence of the destination bond, in absence of a real and effective use on behalf of the faithful, would compromise without justification the rights of private ownership. However, in the case of the buildings of worship belonging to ecclesiastical entities, concrete circumstances might suggest to avoid, in the context of the local and future perspectives, an irreversible decision even when there is no sign of their effective utilization by the community⁶⁸.

⁶⁵ On the absolute responsibility ascribed to the religious authority – by art. 831, paragraph 2, of the Civil Law – in what concerns the potential cessation of the worship-destination bond of the church, see **G. LEZIROLI**, *Edifici di culto cattolico*, cit., p. 877 ss.

⁶⁶ See **C. CARDIA**, *Ordinamenti religiosi e ordinamenti dello Stato. Profili giurisdizionali*, il Mulino, Bologna 2003, pp. 183-184; **F. FINOCCHIARO**, *Il Fondo Edifici di Culto secondo la legge del 20 maggio 1985 n. 222*, cit., whom – speaking of the churches owned by F.E.C. and the right to use them which it possesses outside of the time of liturgical celebrations and on condition it does not jeopardize worship – explicitly refers to the “limits of the destination bond” on the buildings of worship.

⁶⁷ See **C. CARDIA**, *Ordinamenti religiosi e ordinamenti dello Stato*, cit., p. 185; **ID.**, *Manuale di diritto ecclesiastico*, cit., pp. 414-415.

⁶⁸ After all, the responsibility of the ecclesiastical authority on the buildings of worship does not seem to end with the mere cessation of the destination bond, rather it seems to apply also to the future use of the building, in virtue of art. 5 of the law nr. 121/1985, which – as already noted – requires the presence of serious reasons and the necessary agreement of the same authority for the *demolition* of a church. This is so notwithstanding the ownership of the building and the private or public nature of the interests involved. Rather, it is so in virtue of the responsibility ascribed to the same authority, in relation to the representation of “the religious interests of the population”.



It should be also mentioned that the “*Istruzione*” is not legally binding *ex iure canonico*, as clearly stated in the same published decree, thus leaving to the single diocesan bishops the choice of adopting it or not, according to the circumstances and specific cases at hand⁶⁹.

5 - Concluding remarks

Today, many countries, particularly in Europe – a land of ancient Christian tradition – are confronting the issue of deserted places of worship. This issue, however, presents itself under different facets and must thus be faced taking into proper account the historical features, the normative framework and the concrete situation of each country. Even the bishop conferences, which have confronted the issue at the ecclesiastical level, have adopted a variety of solutions and approaches, reflective of the diversity singled out by each national situation.

On the basis of this survey, the Italian situation appears better than those of other countries, both de-facto and from a normative point of view, due also to the nature of our territory and landscape. In fact the concentration in our territory of urban centres, rich in history and artistically attractions, tends to limit the displacement of the population and the negative effects of projects of development of new city-districts and urban outskirts.

However, in the future, as a result of the demographic changes in the population, of the scarcity of the clergy, of potential changes in the

⁶⁹ The text of the “*Istruzione*” has been approved by the General Assembly of the C.E.I. (May 30-31, 2005) with the absolute majority of votes. Thus, it does not carry a binding legal value for the bishops nor requires a review (*recognition*) by the Holy See (can. 455 c.i.c.). The same promulgated decree, signed by Card. Camillo Ruini, President of the C.E.I., (September 1, 2005), brings back its efficacy to art. 18 of the C.E.I. Statute concerning “other decisions” without legal binding value, to which “every bishop will stick to in order to serve the unity and the common good, unless reasons of a special sort will discourage, upon his discretion, their adoption in the diocese.” This aspect is well emphasized by J.I. ARRIETA, *Presentazione*, in AA. VV. *Enti ecclesiastici e controllo dello Stato*, cit., p. 9 – for whom the “*Istruzione*” does “not strive to establish new juridical bonds” – and by M. RIVELLA, *Principali apporti della recente Istruzione CEI*, *ibid.*, pp. 48-50. According to the latter, the document “does not aspire at claiming its own range of authority nor does it aim at self-ascribing a binding force which it does not possess”. Rather, it strives to offer – like the former 1992 version – “an unambiguous interpretation of the Concordat legislation in order to promote its uniform application amongst Italian dioceses, in light also of a shared commitment on the part of the ecclesiastical party towards the public administration structures called to operate in the field.”



normative framework and of complex financial issues, the situation might deteriorate, thus making the change in use of the churches situated within the historical centres more common.

This might require a more flexible approach on the solutions to be adopted. It is sufficient to mention that the guarantee of access and visit to the churches, as foreseen by the “*Intesa*” of 2005 (art. 2, paragraph 7), requires substantial financial resources and a qualified personnel whose recruitment, in the future, might become increasingly difficult. For this reason, the issue of the potential destination-use of redundant churches will have to be probably tackled by the ecclesiastical authorities also with a healthy dose of common sense.

The exclusive worship-use solution – strictly tied to objective conditions of a financial nature and to the inclusion in a lively communitarian or urban context – will have to be necessarily privileged for church-cathedrals and parishes, for sanctuaries and some other places of special popular devotion. However, it might be difficult to maintain this solution for other churches and minor buildings, located in the periphery, or not comprised in the new urban plans. On the other hand, their permanent desertion – either by way of closure, or subsequent sale, or demolition, might determine a grave and irreversible loss on the pastoral level and in the urban or rural setting in which they are located – whereas their partial and/or temporary use for new activities would ensure the continuity of their ownership and a minimal ecclesiastical presence in the territory⁷⁰.

This problem will probably have to be dealt with by the ecclesiastical authorities, within their new pastoral projects, which will necessarily recur to an ever increasing unification of the parishes in historical centres, to the entrustment of more than one parish, especially in mountain and rural areas, to a single priest (can. 526, § 1) or to a team of priests (can. 517, § 1), and which will probably witness the growing involvement of the laity in works of guardianship and custody of the ecclesiastical heritage (cfr. can. 517, § 2).

⁷⁰ On the practical side, it should be in any case recalled that the potential change in destination of a church belonging to an ecclesiastical entity – maybe due to the development of activities different from those related to religion or worship (art. 16, letter b, l. n. 222/1985) or to its rental or sale to third parties – is subject to the necessary canonical authorizations (can. 1277, 1281, 1290-1298 c.i.c.), reflected also in the civil law (art. 7, paragraph 5, l. n. 121/1985 e art. 18, l. n. 222/1985), and to the norms of the Concordat, especially art. 19, paragraph 1, according to which “each substantial change in the end, *destination of property*, and mode of existence of an ecclesiastical entity recognized by civil law acquires civil validity by means of a decree of the Ministry of Internal Affairs.” (art. 19, l. n. 222/1985).



In order to avoid a parochial approach, with the risk of recurring to hasty and not homogeneous solutions – considering also the development of the religious landscape occurred within our country in recent years – it would be best for the whole Italian episcopate to dedicate to the issue a specific reflection. A reflection which, by way of reiterating and updating some guidelines contained in the *Orientamenti* of 1992, could offer directions and general criteria for interested parties, or else might at least offer a framework of the primary estimate parameters, perhaps on the basis of the data which might emerge from the census of the churches launched by the CEI⁷¹.

In light of the multiple aspects implied – ranging from the financial, restorative, fiscal considerations to the property arrangements and new destination uses – the issue will have in any case to be faced, without compromising the legitimate requests of the owners, with the full *cooperation* of all the, public and private, concerned entities and with the involvement of the same civil society.

With this in mind, it will be important to first of all favour the connection with the various public administrations – which, at the national level, is institutionally facilitated by the “*Osservatorio centrale per i beni culturali di interesse religioso di proprietà ecclesiastica*” (art. 7, Intesa del 1995). In addition, their involvement in the territory, together with that of private foundations and non profit organizations, should also be sought, in order to develop specific projects of valorisation and recovery of the buildings at risk. This, without excluding, at the local level, the strong involvement of the population and public opinion, nowadays more sensitive to the protection of traditions and local identities, of which churches represent a fundamental component⁷².

⁷¹ According to C. CARDIA, *Lo spirito dell'accordo*, cit., the generalized census of the churches and, more in general, of the cultural ecclesiastical heritage in Italy – conceived not only as a statistical-numerical census but also a functional census – may offer an overall picture able to suggest different entities general criteria of guidance for the maintenance, change of destination or out-and-out alienation of those real-estate often having a monumental nature.

⁷² In case of a transfer in ownership, it will be necessary to consider the possibility – offered by the new art. 2645-ter, of the civil code. (art. 39-novies, D.L. December 30, 2005, nr. 273, added by the conversion law on February 23, 2006, nr. 51) – of transcribing potential destination bonds applied on a real estate in the cadastral registry, so as to “fulfill interests worthy of protection”, and avoid – in the case at hand – uses not compatible with the original destination. At last, the transfer in ownership of a church considered as cultural heritage requires also the previous authorization of the competent Ministry (art. 56, decree January 22, 2004, n. 42), and due consideration of the right of first refusal which the superintendence may exercise when the transfer does occur against a payment (art. 60 e ss., cit.).



In fact, these sites are significant and important not only for believers, but for the whole civil community, given their testimony of civilizations of great historical and artistic relevance, their tourist attraction, and also considering their custody of personal and ancestral memories, tied to salient moments of the individual life (baptism, first communion, confirmation, marriage and funeral), which create emotional ties able to reinforce the sense of belonging to the territory and the bonds of cohesion within the community. Thus, the disappearance of a church or other place of worship, especially if ancient in origin, is often a loss for the entire community which grew out of it.

Abstract

Nowadays one of the major issues concerning ecclesiastical, or religious, property in Europe, as elsewhere, consists of deciding what to do with redundant churches and places of worship of traditional Christian denominations, all of which have lost their original use, either due to a formal decision of the ecclesiastical authorities or to simple closure to the public. This might have been caused by a series of events, like a significant decrease in the church attendance, limited public resources, new urban planning projects and the fall in religious vocation. For these places there is either the prospect of a new use, or a slow process of decay which can ultimately end up in a sale, or demolition. This problem is faced today with singular urgency in Europe, where it determines an increased risk of decay of much of the historical-artistic heritage, together with the abandonment of the countryside and mountain locations and a progressive desertion of historical town centres. Consequently, the issue concerns not only the religious community but also the civil authorities and public opinion, more and more sensitive to the protection of cultural heritage and the historical memory of local communities. This paper examines many aspects of the issue in some countries (Italy, Germany, Switzerland, France, Québec, the United States), comparing the different legal frameworks and the documents of some national episcopal assemblies on the subject, especially about the change in the use of churches. Finally it concentrates on the situation in Italy, where the legal framework on this subject is strictly connected with the system of church-state relations, making some concluding remarks about future prospects and possible solutions to some of the more serious aspects of the issue.