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The Saxon Cultural Areas Act as a model for Italian legislation?

1. Abstract

This paper analyses the Saxon Cultural Areas Act *(Sächsisches Kulturraumgesetz)* as a "model" potentially to be imported within the Italian legal framework for cultural policies. The Saxonian Cultural Areas Act is very interesting for the perspectives of an Italian implementation of District authorities as a mandatory agreement of local authorities for cultural policies. The most relevant topics in the Saxonian Cultural Areas Act are: 1) The mandatory formation of cultural (local and urban) areas as district authorities born by agreement involving municipalities and districts; 2) The organisation, the bodies and governance of cultural areas; 3) The financing and "equalization" of cultural areas.

In this paper, first of all, the cultural heritage law main issues in the German and Italian legal systems are introduced, to underline the different constitutional bases and the different division of institutional competences between the central government and the territorial institutions (*Länder*/Regions, *Landkreise*/Districts/Counties,[1] Municipalities) both in the German federal model and in the Italian regional model. Then, the Saxon Cultural Areas Act is analyzed, emphasizing its most relevant issue in the mandatory institution of "cultural areas" and in the stable system of their financing. Finally, some relevant trends in Italian local cultural policies are analyzed: on the one hand, the progressive post-pandemic centralization, strengthening the direct collaboration between the Ministry of Culture and local institutions; on the other hand, the birth and diffusion of several models of "cultural districts", promoted by the Regions or by public-private partnerships. Finally, the "optimal operational areas", a model of compulsory associative bodies between municipalities present in Italian environmental legislation, is analyzed.

1 On request of the Editors, even if both the legal history the actual legal framework of German Landkreise and English Local Government are different, we will use the term *counties* ("metropolitan" and "shire" counties) to translate the German *Landkreise* into English, and the term *districts* to analyze the Italian legal framework of local government and the academic literature on *cultural districts*.– The lowest local administrative level in Germany is represented by the municipalities either belonging to a Landkreis, or constituting an independent city. The *Landkreise*, in turn, according to each *Länder* Constitutions, taking on all inter-municipal tasks, are financed above all by the municipalities via county levies, and constitute "municipal associations". The remarked distinction between "metropolitan" and "non-metropolitan" (or *shire*) counties is present in English local-government legal framework.– German and foreign public law scholars commonly translate in English the term *"Landkreis"* using both "district" and "county" legal definitions. Often "urban", "rural", "metropolitan" and "non-metropolitan" districts/counties are distinguished. *Ex multis*, see: Schefold, Dian (2012). *Local government in Germany*. In: Angel-Manuel Moreno (editor). *Local government in the Member States of the European Union: a comparative legal perspective*. Instituto Nacional de Administración Pública, Madrid. 233–256; Frenzel, Eike Michael (2013). *Germany: Local government in Germany: An indispensable level of EU governance*. In: Panara, Carlo. Varney, Michael (Editors). *Local Government in Europe*. Routledge, 97–127. Wollmann, Hellmut (2024). *Local Government and Governance in Germany*. Springer, Wiesbaden; Mannewitz, Tom. Rudzio, Wolfgang (2023). *The Municipalities: Between Administration and Politics*. In: *The Political System of Germany*. Springer, Wiesbaden; Schrapper, Ludger (2021). *The administration of the Länder*. In: Kuhlmann, Sabine et al. (Editors). *Public Administration in Germany,* IIAS Series, Palgrave Macmillan, 105–121.

2. Federation, Lander and local public bodies in German Cultural Heritage Law

Unlike the governance system of culture in Germany that appears to be clearly decentralized in a federal legal order, the Italian Republic is a regional legal order.[2]

According to Häberle,[3] "Federalism and culture are so closely intertwined in Germany that the vivid term 'cultural federalism' has become established." Häberle admirably summarizes the seven reasons for legitimizing German federalism, reconstructing the legal literature and the trends of the *Bundesverfasssungsgericht: "1) legitimation based on fundamental rights theory (including the freedom 'on the ground' and 'on a small scale' derived from cultural freedoms) (2) legitimation based on democratic theory (including ethnic aspects, keyword: protection of minorities) (3) legitimation based on the vertical division of power (control argument) (4) economic and development policy legitimation (including the competition argument) (5) the integration function as an argument for federalism (balance between homogeneity and plurality, between difference and unity) (6) the task-sharing, decentralising dimension (the subsidiarity argument) (7) specifically in Europe, the European policy argument (keyword: Germany's or Europe's 'culture as diversity and wholeness')".*[4] It is not possible here to go over all the evolutions and definitions of German federalism. From the outset, on the basis of the GG, German federalism differed from the classical *"dual" federalism* of the North American type, to develop as *cooperative federalism* based on solidarity, on the *"Konstitutionalisierung der Gemeinschaftsaufgaben | Constitutionalisation of joint tasks"* on the key-concepts of *"Unitarischen Bundesstaat | Unitary federal state"*, according to the well-known definition of K. Hesse (1962),[5] and of *"Bundestreue | loyalty among the federal states"*. As is well known, the solidarity base of German cooperative federalism has guided and characterized the post-1989 unification process, to the point of being properly characterized, as Häberle proposed, as a *"fiduziarischen Föderalismus | fiduciary federalism"*. In the following years, marked by processes of reorganization of the system of distribution of funding among the Länder, on the basis of the case law of the BVerfGE, the scientific literature proposed to interpret the institutional evolutions underway as the affirmation of a new model of competitive federalism (*"Konkurrenzföderalismus", or "kompetitiver Föderalismus"*). To correctly interpret current German federalism, it is necessary, as Haberle argues, to recognize the coexistence of all these elements: *"Separation federalism should be combined in 'practical concordance' with cooperative or solidarity federalism, extending to fiduciary federalism."* [6]

Among the seven reasons for legitimizing German federalism, it was highlighted that *Kulturföderalismus* is one of the most relevant contents of the German federal model: "Federalism in

2 About the cultural heritage protection in German legal system, in general terms, see Buoso, Elena (2008). *I caratteri fondamentali della disciplina dei beni culturali in Germania in una prospettiva comparatistica*. Rivista giuridica di urbanistica, 1, 210–232; Lenski, Sophie-Charlotte (2013). *Öffentliches Kulturrecht*. Vol. 220. Mohr Siebeck; Ziefer, Anke (2010). *Naturschutz e Denkmalschutz nella Costituzione (Grundgesetz) della Repubblica Federale di Germania*. Ricerche di storia dell'arte, 33(2), 89–93; Germelmann, Claas Friedrich (2013). *Kultur und staatliches Handeln*. Vol. 223. Mohr Siebeck; Häberle, Peter (1999). *Kulturhoheit im Bundesstaat—Entwicklungen und Perspektiven*. Archiv des öffentlichen Rechts, 124(4), 549–582; Scheller, Henrik (2006). *Der deutsche Bildungsföderalismus–zwischen Kulturhoheit der Länder und europäischer Harmonisierung*. In: Vogel, Bernhard/Hrbek, Rudolf/Fischer, Thomas (Eds.). Halbzeitbilanz: die Arbeitsergebnisse der deutschen Bundesstaatskommission im europäischen Vergleich. Nomos, 2006, 30–47; Ruppelt, Georg (2002). *Kulturföderalismus*. Bibliotheksdienst, 36(6), 703–706; Wollmann, Helmut (2019). *El federalismo alemán,¿ de la descentralización a la re-centralización?: El caso de la autonomía de los Estados Federados (Länder) en materia de cultura*. In: Sánchez, Ivón Valdés. Intellectum valde ama, ama intensamente la inteligencia. Homenaje al Profesor Octavio Uña Juárez. Rafael Lazcano Editor, Madrid, 2019, vol 3; Eisenmann, Susanne, et al. (2019). *Kooperation von Bund und Ländern in der Bildungspolitik: Bildungsföderalismus in der Kritik*. Ifo Schnelldienst, 72(03), 03–17; . Mager, Christoph, and Madeleine Wagner (2022). *Kulturelle Infrastrukturen in deutschen Klein-und Mittelstädten: Eine Typisierung derStandortgemeinschaften von Einrichtungen derkulturellen Daseinsvorsorge*. Raumforschung und Raumordnung/Spatial Research and Planning. 80(4), 379–396.

3 *Föderalismus und Kultur gehören in Deutschland so intensiv zusammen, daß sich der plastische Begriff „Kulturföderalismus" eingebürgert hat*. Häberle, Peter (1999), 553.

4 *(1) die grundrechtstheoretische Legitimation (einschließlich der aus den kulturellen Freiheiten gewonnenen Freiheit „vor Ort", „im Kleinen") (2) die demokratietheoretische Legitimation (einschließlich der ethnischen Aspekte, Stichwort Minderheitenschutz) (3) die vertikal gewaltenteilende Legitimation (Kontroll-Argument) (4) die wirtschaftliche, entwicklungspolitische Legitimation (einschließlich des Konkurrenz-Arguments) (5) die Integrationsfunktion als Föderalismus-Argument (Balance von Homogenität und Pluralität, von Differenz und Einheit) (6) die aufgabenteilende, dezentralisierende Dimension (das Subsidiaritäts- Argument) (7) speziell in Europa das europapolitische Argument (Stichwort: Deutschlands bzw. Europas „Kultur als Vielfalt und Ganzheit)"*. Häberle, Peter (1999)

5 Hesse, Karl (1995). *Grundzüge des Verfassungsrechts des Bundesrepublik Deutschlands*, 20th ed., 96.

6 *Trennungsföderalismus sollten sich in „praktischer Konkordanz" mit solchen des Kooperativen bzw. des Solidarischen bis hin zum Fiduziarischen verbinden*. Häberle, Peter (1999), 556.

Germany is ultimately legitimized by cultural diversity."[7] The relationship between the *constitutional state and culture* has been explored in several steps. First of all, the *guarantee of human dignity (Menschenwürdegarantie)* under Article 1 of the GG, defined "the cultural-anthropological premise of the *constitutional state: "That is why, according to Article 20 of the Basic Law, the people must always be included in the process of thinking, even if no 'classic' has yet found the final synthesis of Articles 1 and 20 of the Basic Law. One could almost say that culture is a form of self-worth related to human beings and their dignity, and is at least as important as nature and the environment. Democracy follows as an 'organisational consequence' from Article 1 of the Basic Law as a cultural-anthropological premise of the constitutional state. Human dignity and political rights belong together. The constitutional state organises this connection."* [8] Secondly, *"Freedom is, from the outset, cultural freedom, freedom beyond the state of nature."*[9] There is no "natural" freedom in the sense that there would be freedom without culture. But it is about the insight that only culture opens up possibilities for freedom, gradually and step by step. Several constitutional texts declare that freedom is given an "object" through education: "Freedom only gets a 'substance' through education and training."[10] It is no coincidence that both new and old constitutional charters think intensively about culture and the state. We can see within old and new constitutions a broader range of constitutional provisions: from the preambles that are valuable or culturally enriched to cultural state clauses, citizen- and people-related cultural identity clauses, the protection of cultural property to fundamental cultural rights in their dimensions of the right of defense, the right to participate, the duty to protect and promote as well as the educational goals, to which human rights are also related. Thirdly, the constitutional State protects the pluralism of cultural subjects and requires defining the role of private individuals in culture and education (*kulturellen Trägerpluralismus*), allowing them to participate in the promotion and management of culture and education.

According to Germelmann,[11] the BVerfGE case law focused the pluralistic "community core" of cultural phenomena, which develop independently of public powers: *"There is also no uniform definition of culture in court rulings. As far as can be seen, the Federal Constitutional Court has only once attempted an abstract definition, describing culture as 'the totality of mental forces effective within a community, which develop independently of the state and carry their value within themselves'."* [12] In this perspective, the Articles 4(1) (Freedom of faith and conscience) and, above all, 5 (3) (Freedom of expression, arts and sciences) of the GG must be emphasized: *"The necessary openness of the legal system to all cultural phenomena stems from the fundamental constitutional decision expressed in the Basic Principles, in particular the cultural rights provision in Article 5(3) of the Basic Law. Ultimately, the state can only use the law to create the framework for culture and cultural development."*[13] This pluralism is also declined as *religious pluralism* and protects the space of religious institutions in culture and education. Finally, the German constitutional state and federalism as a *"Kulturnation"* requires that state schools and universities are in the foreground, which is different from the American federalism. Furthermore, the German model of *Kulturföderalismus* allowed the "protection" of the role of public radio and television against the "commercial broadcasting", considering their "cultural responsibility".[14] In all of these fields, the *Kulturföderalismus* enabled the definition and expansion of the concept of "basic cultural services" as a limit to the privatization of cultural services,

7 *Föderalismus legitimiert sich in Deutschland erstlich und letztlich aus der kulturellen Vielfalt.* Häberle, Peter (1999), 556.

8 *Darum ist das Volk nach Art. 20 GG stets mitzudenken, auch wenn bis heute kein „Klassiker" die letzte Synthese von Art. 1 und 20 GG gefunden hat. Fast könnte man sagen, Kultur sei ein auf die Menschen bzw. ihre Würde bezogener Selbstwert, so wichtig jedenfalls wie Natur und Umwelt. Aus Art. 1 GG als kulturanthropologischer Prämisse des Verfassungsstaates folgt die Demokratie als „organisatorische Konsequenz". Menschenwürde und politische Rechte gehören zusammen. Der Verfassungsstaat organisiert diese Verbindung.* Häberle, Peter (1999), 566.

9 *Freiheit ist von vornherein kulturelle Freiheit, Freiheit jenseits des Naturzustandes.* Häberle, Peter (1999)

10 *Freiheit erhält erst durch Erziehung und Bildung einen „Gegenstand".* Häberle, Peter (1999)

11 Germelmann, Claas Friedrich (2013), 23.

12 *Auch in der Rechtsprechung existiert kein einheitlicher Kulturbegriff. Das Bundesverfassungsgericht hat sich- soweit ersichtlich- nur einmal an einer abstrakten Begriffsbestimmung verstcht, als es die Kultur als "die Gesamtheit der innerhalb einer Gemeinschaft wirksamen geistigen Kräfte, die sich unabhängig vom Staate entfalten tnd ihren Wert in sich tragen", bezeichnete.*

13 *Folgt die notwendige Offenheit der rechtlichen Ordnung für grundsätzlich alle kulturellen Phänomene aus der verfasstngsrechthchen Grundentscheidung, die in den Grundrecliten, insbesondere der kulturrechtlichcn Basisvorschrift des Art. 5 Abs. 3 GG zum Ausdruck kommt. Der Staat kann durch das Recht letztlich nur den Rahmen für die Kultur und die kulturelle Entwicklung schaffen.* Germelmann, Claas Friedrich (2013), 24.

14 BVerfGE 90, 60 (90).

which are constitutionally guaranteed. In this field, the constitutional theory of the *"common goods"* has been developed, in order to define the boundaries of the "cultural statehood" against the "cultural pluralism" within the German *Kulturföderalismus*.[15]

One of the fundamental principles of the German federal model of *Kulturföderalismus* is thus the *Kulturhoheit der Länder*, provided by Art. 30 of the GG, according to which it is the task of the individual federal states to manage the entire sector of cultural heritage, education and universities autonomously in their territory. The *Kulturhoheit der Länder* has been defined by the *Bundesverfassungsgericht* as the "Core element of the countries' sovereignty."[16] According to Häberle,[17] the *Kulturhoheit der Länder* must be broken down into three dogmatic issues: 1) the general cultural sovereignty of the Länder and local institutions; 2) the specific cultural competences of the federal government *(Kulturkompetenzen des Bundes)*; 3) the guarantee of the "care and promotion" of culture by society, which is achieved through the "pluralism of cultural subjects" and requires defining the role of private individuals *(kulturellen Trägerpluralismus)*.

According to Lensky, although the *Kulturhoheit der Länder* was identified very early on by the Federal Constitutional Court as the "core of the statehood of the Länder" under the GG, *"In fact, however, this principle – as was made clearer in subsequent rulings by the Federal Constitutional Court – is less a component of the principle of federalism than a state structural principle subject to the eternity clause, and more a partial characterisation of the written order of competences in the Basic Law."*[18] In this respect, the cultural sovereignty of the Länder describes nothing other than the residual competence of the Länder in the area of legislation and administration for the area of culture, as laid down in Articles 30 (Sovereign powers of the Länder), 70 (Division of powers between the Federation and the Länder) and 83 ([Execution by the Länder) of the GG, in the absence of comprehensive competence of the federation in this area. Despite the ambiguous wording, which would suggest that the Länder claim sovereignty over culture – which can be explained above all by the technical anchoring of the term in the field of education – the term thus develops *"keinen eigenständigen normativen Gehalt"* beyond the reference to the *Kompetenzordnung* and may suggest *"dogmatischen Missverständnissen"*.

It is clear that two dogmatic approaches are emerging with respect to the *Kulturhoheit der Länder*. On the one hand, the cultural sovereignty is seen as a fundamental misunderstanding of the division of competences between the *Bund* and the Länder *(a fundamental misunderstanding of the division of responsibilities)*.[19]

According to Articles 30, 70 and 83 of the GG, the Länder generally have a residual competence in all areas of state authority. They have the competence to exercise state power as long as and to the extent that the GG does not make or permit any other provision. According to this basic concept alone, there can be no exclusive competence of the Länder, since such a competence would be in structural contradiction to the *principle of subsidiary competence (Grundsatz der Auffangzuständigkeit)*. The GG would therefore not assign, according to this approach, to the Länder any firmly defined competences that are defensible against the federation. Rather, they would have a broad, unspecified competence with regard to specific topics, which in turn is limited only by certain delimited competences of the federation. The assumption of an exclusive legislative competence of the Länder in the field of culture cannot be convincing, because in fact the Länder do not have all the competences in this area, but rather the federal government can also claim competences here, even if only sporadically. Overall, the *concept of cultural sovereignty* of the Länder would merely indicate that the GG assigns the federal government only very limited and specific competencies in the area of culture, so that conversely, the competencies for most cultural areas lie with the Länder.

No further normative consequences should be derived from it. In terms of precise terminology, it would be better to speak of a "broad competence" of the Länder in the field of culture or, conversely,

15 Häberle, Peter (1999), 568; Lensky, Lenski, Sophie-Charlotte (2013), 95.

16 *Kernstück der Eigenstaatlichkeit der Länder.* BverfGE, 26.03.1957, 6, 309 (354)

17 Häberle, Peter (1999), 560

18 *„Tatsächlich handelt es sich jedoch bei diesem Prinzip- wie auch in der anschließenden Rechtsprechung des Bundes verfassungsgerichts deutlicher wurde- weniger un einen Bestandteil des Bun desstaatsprinzips als der Ewigkeitsklausel unterliegendem Staatsstrukturprin zip, als vielmehr un eine Teilcharakterisierung der geschriebenen Kompetenz ordnung des Grundgesetzes."* Lenski, Sophie-Charlotte (2013), 94 ff.

19 *ein grundlegendes Missverständnis der Aufteilung der Kompetenzen*

of only very specific federal competencies.[20] Vogt provides a key,[21] tracing the origins of the Basic Law of 1949 back to the Weimar Constitution of 1919, which in turn was based on the Constitution of the German Empire of 1871, which was based on the Constitution of the North German Confederation of 1861. Article 4 of the latter placed economic life under the jurisdiction of the Reich.[22] Consequently, the federal government has traditionally been active in copyright law and in the promotion of non-profit films (by cabinet decision of 30 July 2025, funding for the German Film Fund and the German Motion Picture Fund was almost doubled to 250 million euros compared to the current year). The federal government has undisputed responsibility for artists' social insurance. However, the federal government is not permitted to establish a cultural foundation; the so-called Federal Cultural Foundation is legally a foundation under Saxony-Anhalt state law. The federal government has direct responsibility outside the borders of the 16 states of the Federal Republic of Germany. It is the only museum that supports the Casa di Goethe in Rome, although not directly, but through a complicated legal construct in which the Arbeitskreis selbständiger Kultur-Institute e.V. (Working Group of Independent Cultural Institutes) acts as a vehicle. The federal government can directly fund the research of the Max Weber Foundation – German Humanities Institutes Abroad,[23] as research funding is considered concurrent legislation. For the funding of the Prussian Cultural Heritage Foundation, the Bayreuth Festival, the Germanisches Nationalmuseum, etc., the federal government must secure the support of the federal states, regardless of their financial circumstances. By cabinet decision of 30 July 2025, the federal government increased its funding for culture and media in 2026 by around 10% to 2.5 billion euros. This is still a fraction of the funds provided by the federal states, municipalities and churches.

According to Germelmann,[24] any action by the federal government in the field of cultural heritage would be permissible without a specific requirement for competence. On the contrary, the federal principle *(bundesstaatliche Prinzip)* within Article 20 (1) of the Basic Law requires that the federal government can, just like for any fulfillment of a public task, rely on a basis of competence for its cultural activities. Although there are only a few legislative competencies of the federal government in cultural law, there are several unwritten administrative and financing competencies. Overall, however, there still is no clearly structured overall concept for federal responsibility for cultural matters; rather, the situation is still very complex and characterized by ad hoc regulations. The deficit of written constitutional law regarding the regulation of actual federal activity in the field of culture was lamented and sparked a debate that culminated in the federalism reforms of 2006 and beyond (see below). On the other hand, other scholars[25] suggest focusing on the distinction between protection *(Denkmalschutz)* and care *(Denkmalpflege)*.

The protection of cultural heritage in Germany *(Denkmalschutz)* appears in the German GG only as the title of the Bund's exclusive competence, *limited to the protection of German cultural heritage against*

20 This approach is present also in Germelmann, Claas Friedrich (2013), 335 :*"Der Begriff beschreibt damit ungeachtet aller terminologischen Schwierigkeiten zwar eine allgemeine normative Grundentscheidung, die indes an zahlreichen Stellen durchbrochen ist. Die nähere Beleuchtung der Zuständigkeitsverteilung zwischen Bund, Ländern und Gemeinden hat nämlich gezeigt, dass die Kulturhoheit keinesfalls als "Kulturmonopol" verstanden werden kann. Vielmehr könnte man angesichts der Zuständigkeitszuweisung der Verfassung in einzelnen Bereichen durchaus auch von einer "Kulturhoheit des Bundes""*.

21 Vogt, Matthias Theodor (1998a): *Was soll ein Bundeskulturminister tun? Perspectives on cultural policy in Germany*. Dresden 1998 [special edition, 78 pages, [online: http://kultur.org/Doi101696/vogt-1998a.pdf]. Vogt, Matthias Theodor (1998b) *Perspectives on cultural policy in Germany* [reprint of 1998a]. In: Network Cultural Work, Kognos-Verlag Augsburg 12/1998. pp. 561–574. Vogt, Matthias Theodor (1998c) *Perspectives on Cultural Policy in Germany* [Reprint of 1998a]. In: Stage Cooperative. Edited by Hans Herdlein on behalf of the Cooperative of German Stage Employees. Hamburg. Part I Issue 6-7/1998. pp. 15–21; Part II Issue 5/1999, pp. 16-18; Part III Issue 6–7/1999, pp. 15–17. Vogt, Matthias Theodor (1998d) *Perspectives on Cultural Policy in Germany* [Reprint of 1998a]. In: Kulturpolitische Umschau. Edited by Jörg-Dieter Gauger on behalf of the Konrad Adenauer Foundation. St. Augustin. Part I Issue 2–3 / June 1998, pp. 74–84; Part II Issue 4–5 / March 1990 pp. 90–105.

22 Constitution of the North German Confederation of 16 April 1867, Art. 4. „The following matters are subject to supervision by the Confederation and its legislation: (1) provisions relating to [...], trade, [...] 2) commercial legislation [...] (6) the protection of intellectual property; [...]."

23 with locations in Beirut, Istanbul, London, New Delhi, Paris, Rome, Tokyo, Warsaw and Washington, D.C., as well as in Tbilisi, Vilnius, Helsinki and Lviv; replacing the dissolved German Historical Institute in Moscow.

24 Germelmann, Claas Friedrich (2013), 337.

25 Ziefer, Anke (2010), 90.

export (Art. 73(1), 5a), but it must be noted that the *Grundgesetz* does not contain any mention of it among the general principles. In the absence of further determinations – according to the federal principles of *residual general competence of the Länder* referred to in Articles 30 and 70 of the GG – the regulation of cultural heritage must be included among the (few, 11) matters of *exclusive competence of the member Länder* and it is in their constitutions that it is often referred to among the main tasks of the state (many of them qualify as *Kulturstaat*, the state protector and promoter of culture).[26]

Since the end of the 1960s, all the western Länder (the term *'Bundesländer'* only exists in Austria) have equipped themselves with laws and administrative structures for the protection of cultural heritage; since reunification, this also applies to the eastern states. Some areas of *shared federal competence,* such as the *protection of nature and the landscape*, led in 1980 to the adoption of the *federal law* for the protection of cultural heritage *(Gesetz zur Berücksichtigung des Denkmalschutztes im Bundesrecht)*, as part of the implementation of the typically German cooperative federalism, which contains heterogeneous coordination disciplines for potentially conflicting concurrent legislative matters (urban planning, landscape, etc.), confirming the model which entrusts the individual Länder with the responsibility for regulating their respective sectors. There are therefore sixteen different disciplines for the protection of cultural property in Germany, but it can be said that in some respects the legislation is rather homogeneous, and where this is not the case, there has nevertheless been a general tendency in case law towards harmonization and the development of common interpretative criteria, which mitigate where possible the literal divergence of provisions. In Germany there is a division between different functions concerning cultural heritage – in a certain way analogous to the Italian one between "protection" and "enhancement", which will be analyzed in the next paragraphs of this paper – distinguishing between protection *(Denkmalschutz)* and care *(Denkmalpflege)*. The first one includes measures aimed at the classification, conservation and restoration of cultural heritage, adopted by statutory laws or authoritative measures immediately producing unfavorable effects on the legal sphere of the recipient, while the second one is identified with expertise, research, promotion and support, including financial support, complementary to the measures themselves. According to the interpretations of the legal literature, the difference does not consist so much in the object as in the means available to them, which are legislative acts and authoritative measures for protection *(Denkmalschutz)* and technical-practical activities and financial grants *(Denkmalpflege)*. However, in many provisions the two terms are often used synonymously or associated in legislative provisions, to express a single complex concept. In most state models, protection is reserved for the level of the *Land* administration, with the possibility of delegating or transferring part of the functions to the municipalities, but retaining broad powers of control and direction over their work. On the other hand, the functions relating to care fall within the scope of autonomy *(Selbstverwaltung)* of local authorities and therefore, in this case, the possibilities of control by the state authorities are more limited (This issue will be better focused on later).

The cultural balance of power did not see great changes after German unification in 1990. In the last decades of XX century, the developments in German cultural policy showed the strengthening of the role of central authorities, due to the establishment of a Minister of State for Culture at the

26 As example, the Free State of Bavaria defines itself, in Article 3 of its Constitution, in force since 2 December 1949, as a *"Rechts-, Kultur- und Sozialstaat"*, with the obligation to protect the commons *(Er dient dem Gemeinwohl)*. Among the various constitutions of the Länder, this affirmation of the importance of culture as a common heritage, like the "rule of law" and the "welfare state", is among the most significant and is not only a programmatic affirmation, but also implies specific legal duties. Similar provisions can be found, *ex multis*, in the Constitutions of Rhineland-Palatinate (Art. 40: *"Der Staat nimmt die Denkmäler der Kunst, der Geschichte und der Natur sowie die Landschaft in seine Obhut und Pflege"*), Saarland (Art. 34: *"Die Denkmäler der Kunst, der Geschichte und der Natur sowie die Landschaft genießen den Schutz und die Pflege des Staates"*), Assia (Art. 62: *"Denkmal- und Landschaftsschutz: Die Denkmäler der Kunst, der Geschichte und Kultur sowie die Landschaft genießen den Schutz und die Pflege des Staates und der Gemeinden"*), North Rhine-Westphalia (Art. 18: *"(2) Die Denkmäler der Kunst, der Geschichte und der Kultur, die Landschaft und Naturdenkmale stehen unter dem Schutz des Landes, der Gemeinden und Gemeindeverbände"*), Baden-Württemberg(Art. 3c: *"(2) Die Landschaft sowie die Denkmale der Kunst, der Geschichte und der Natur genießen öffentlichen Schutz und die Pflege des Staates und der Gemeinden"*), Saxony (Art. 11: *(1) Das Land fördert das kulturelle, das künstlerische und wissenschaftliche Schaffen, die sportliche Betätigung sowie den Austausch auf diesen Gebieten. (2) Die Teilnahme an der Kultur in ihrer Vielfalt und am Sport ist dem gesamten Volk zu ermöglichen. Zu diesem Zweck werden öffentlich zugängliche Museen, Bibliotheken, Archive, Gedenkstätten, Theater, Sportstätten, musikalische und weitere kulturelle Einrichtungen sowie allgemein zugängliche Universitäten, Hochschulen, Schulen und andere Bildungseinrichtungen unterhalten. (3) Denkmale und andere Kulturgüter stehen unter dem Schutz und der Pflege des Landes. Für ihr Verbleiben in Sachsen setzt sich das Land ein.*).

Chancellor's Office in 1998, with its financial power to launch projects of national relevance. According to Wollmann,[27] German cultural federalism, after the structure defined by the GG in 1949, has gone through several historical phases, oscillating between decentralization and recentralization in a "pendulum movement". In 1969 a certain recentralization took place, embodied in the recognition of an increase in the legislative powers of the Federation and an increasing intertwining (*Verflechtung*) with the legislative and operational functions of the Länder. Among these changes, various mechanisms that allowed the federal level to intervene in the education and culture sector stood out, without being exhaustive, on the basis of the so-called *Rahmengesetzgebung*, the "framework legislative competence", according to which federal legislation can determine the legal framework of the respective legislative matter, whereas it would be the competence and responsibility of each Land to legislate on its own specificities. In 2006 (*Föderalismusreform I*, First Reform of Federalism) some decentralisation took place through the reversal of the entanglement (*Entflechtung*) and the withdrawal from the Federation of some legislative and co-management matters with the other territorial levels. This reform was interpreted as a "prohibition of cooperation" (*Kooperationsverbot*), as a "prohibition of the political and financial interference" by the Federation in the sphere and sub-national spaces of culture and education. Similarly, it was also regarded as an important confirmation of the "quasi-cultural sovereignty" of the Länder. In 2009 (*Föderalismusreform II*, Second Reform of Federalism) there was a centralisation in financial matters with the aim of curbing the public debt as a whole. Through this reform, the mechanism called "public debt brake" (*Schuldenbremse*) was introduced, which resulted in a restriction of the budgetary autonomy of the Länder and the introduction of "supervision" mechanisms by the federal government. In 2016, the Federation's financial power over the Länder was strengthened, due to the latter's abandonment of the so-called *horizontaler Finnanzausgleich*, "horizontal compensation" between the wealthiest and less financially resourced Länder: the Federation substituted the Länder for solidarity aid. In 2017, with the reform of Art. 104c of the GG, progress was made in centralization through federal subsidies for the financing of educational infrastructures at the local level. The reform sparked a wide debate and was interpreted as a serious interference in the traditional *Kulturhoheit* of the Länder. The conflict between the Bund and the Länder reached the parliamentary Mediation Committee, the *Vermittlungsausschuss* (A *Bundestag* and *Bundesrat* joint committee, a parliamentary "auxiliary body" that can be called in in controversial legislative projects and processes. It is not entitled to adopt binding amendments itself, but can only submit to the two legislative bodies proposals for agreement to be approved by the Bundestag and Bundesrat), who deliberated on a compromise solution on 20 February 2019, confirming the scope of the reform of Art. 104c of the GG, but reducing the powers of state control in the field of education and culture.

According to Eisenmann,[28] four arguments have been identified in support of the German model of *Kulturföderalismus*, against political pressures towards a centralization of cultural policies. The first argument is historical: the structures of governance in Germany were, although pre-democratic, always distributed among several institutions (principalities, ecclesiastical and secular authorities, free cities and imperial towns). All of these institutions were within the so called "German cultural nation". The regional and local diversity of high culture institutions, particularly in comparison to other European countries, is a legacy of the territorial fragmentation, forming a "bulwark of competition and freedom" against absolutism and strict governance. The second argument is political-institutional: the federal and subsidiary organization of cultural policies allows for greater proximity of decisions to citizens, more transparent and direct financing systems, and greater democratic control of them. Thus the main issue becomes the balance and coexistence, on the one hand, between organic federal transfers of resources to the Länder, entrusting them with governance of whole sectors, and, on the other, *ad hoc* federal funding with *ad hoc* federal governance.[29] The third topic concerns the protection of cultural diversity and identity.

27 Wollmann, Helmut (2019), 8

28 Eisenmann, Susanne, et al. (2019), 3–17

29 The need to find this balance is also underlined in Ruppelt, Georg (2002), 704, who analyzes the *Kulturföderalismus* with reference to public libraries. He also stresses the dynamic need to balance, in the different *Länder* models implemented in practice, the ordinary periodic funding for small and medium-sized cultural institutions and the financing of major (and extraordinary) cultural events.

In comparison with other European realities, where differentiated regional cultural identities have fueled secessionist movements, such as in Spain, the *Kulturföderalismus* guarantees both the protection of cultural identities and diversity and the unity of the nation. The fourth issue concerns the flexibility of financing systems. Especially with reference to the Länder educational policies (*Bildungsföderalismus*), it can be observed that a financing system based on federal competition with binding minimum standards may be preferable to "top-down" uniform solutions for all the Länder (in particular, it is worth mentioning the reforms of the higher education and training system after the so-called "Pisa-shock"). On the relationship between *Bildungsföderalismus* and *Kulturhoheit der Länder* and on the reforms needed after the publication of the first PISA-Studie in the early 2000s, it has been noted that "The education policy arena of the Federal Republic can be characterized as a non-hierarchical structured and closely linked network, which is shaped by both cooperative and competitive structural elements and negotiation patterns".[30] The *Bundesverfassungsgericht* has always played a special role in this non-hierarchical network, defining the *Kulturhoheit "als konstituierendes Element der ländereigenen Staatsqualitätx"* and subjected it to the Länder parliamentary reservation (*Parlamentsvorbehalt der Länder*). However, the Länder sovereignty is significantly restricted by various competencies of the federal government (in particular, for the implementation of reforms required by the EU or the Council of Europe, such as the so-called "Bologna process"), so that both levels of the federal system are constitutionally obligated to cooperate with several tools (veto-powers, votes against expressed in *the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder* (KMK) or in the *Bundesrat*, appeal to the Constitutional Court in accordance with the provisions of Art. 99 GG).

The *Kulturhoheit der Länder* is supplemented by a so-called "municipal cultural sovereignty" *kommunale Kulturhoheit*, which is derived from the right of the municipalities to regulate the affairs of the local community on their own responsibility, and takes shape within the right of municipalities to regulate cultural matters as affairs of the local community according to Article 28 (2), 1 of the GG, already mentioned: *"The so-called municipal cultural sovereignty concerns the objective guarantee of legal institutions as an essential core element of municipal self-government."*[31] Since the municipalities are authorized, within the framework of this constitutionally guaranteed self-government, to regulate *"the needs and interests that are rooted in the local community or have a specific connection to it [...], which are thus common to the residents of the municipality as such, as they affect the coexistence and living of people in the (political) municipality"*, then this *general municipal all-encompassing jurisdiction (prinzipielle gemeindliche Allzuständigkeit)* also encompasses all cultural aspects of the local community. In practice, this concerns a variety of municipal cultural activities, particularly the institutional establishment and maintenance of municipal museums, theaters, libraries, and archives, but also individual or project-based financial support for cultural activities.[32] The legislative power (Federation or Länder) is therefore permitted to intervene in municipal self-administration by withdrawing tasks and limiting self-responsibility. However, this possibility of limitation is itself subject to boundaries, which are particularly drawn by the so-called "guarantee of self-administration" *(Selbstverwaltungsgarantie)*.

Regarding *Selbstverwaltungsgarantie*, some scholars underline that just as it is difficult to define the exact boundaries of state sovereignty in the cultural sphere on the basis of constitutional rules, on the basis of Art. 28(2), 1, in parallel there are no indications as to why all municipal cultural tasks should generally be assigned to the area *Selbstverwaltungsgarantie*. The core of the self-administration guarantee does not include a "task catalog" that is specifically defined or determinable by established criteria, as observed by the BVerfGE.[33] Therefore the competencies belonging to the federal government or the

30 Scheller, Henrik (2006), 36.

31 *Die sogenannte komnunale Kulturhoheit betrifft die objektive Rechtsinstitutionsgarantie als wesentlichen Kerngehalt kommunaler Selbstverwaltung.*

32 Lenski, Sophie-Charlotte (2013), 97–98, which underlines that *"Die begriffliche Parallelisierung zur „Kulturl1oheit der Länder" darf jedoch nicht verdecken, dass es sich bei der Erstreckung der gemeindlichen Selbstver waltungsgarantie auf alle Bereich des kulturellen Lebens der Kommunen nicht um eine Frage der Kompetenzordnung handelt, wie sie sich-- freilich verein fachend - hinter dem Schlagwort der Kulturhoheit der Länder verbirgt. Die Garantie kommunaler Selbstverwaltung weist zwar durchaus strukturelle Kopplungen zur Kompetcnzordnung auf, ist in ihrem normativen Gehalt je doch zunächst gerade nicht auf diese ausgerichtet"*. See also Germelmann, Claas Friedrich (2013), 335.

33 BVerfGE 79, 127 (1–16). Lenski, Sophie-Charlotte (2013), 99: *"Insgesamt ist der Begriff der kommunalen Kulturhoheit somit ähnlich missverständlich wie derjenige der Kulturhoheit der Länder. Der Sache nach bezeichnet er einen spezifischen Teilbereich der kommunalen Selbstverwaltungsgarantie, der jedoch nicht kompetenzbegründend, sondern vielmelır freiheitsverstärkend wirkt. Insofern weist das Konzept*

Länder under Articles 30, 70, and 83 of the GG would remain unaffected by the guarantee of self-administration.

However, other scholars focus on the *kommunale Kulturhoheit* with regard the distinction between protection *(Denkmalschutz)* and care *(Denkmalpflege)* under Articles 28(2) and (3) of the GG, which provides that municipalities must be guaranteed the right to regulate all matters relating to the local community on their own responsibility and independently. It is underlined that the interpretation of Art. 28(2) and (3) the GG would allow one to argue that, on the one hand, the protection in the strict sense must have a uniform federal dimension; on the other hand, the interventions falling within the concept of care are closely linked to the local reality and must therefore also be regulated by the municipalities, following a principle that in some way reflects the criterion according to which in Italy protection is the responsibility of the State and enhancement of the Regions within the framework of the fundamental principles of the State.[34]

The *'guarantee of self-government'* poses an extraordinary problem in municipal financial practice when distinguishing between (1) delegated tasks, (2) mandatory tasks, and (3) voluntary tasks. The former, such as the issuance of state documents, should in principle be financed by separate state funds, but this is often not the case. This applies even more to (2) mandatory tasks, especially in the social sector, which currently accounts for 70% of district budgets. Only when all these tasks have been completed, according to the theory and practice of state financial supervision, are the municipalities free to engage in (3) voluntary tasks. In view of the finding that in the eastern states, for example, the infrastructure in the water sector had last been renewed in 1912 before the First World War, this left little or no funds for the cultural sector. After 1990, the regional councils of the Free State of Saxony consistently vetoed municipal cultural funding. This could only be changed when the Saxon state parliament passed Section 2(1) of the SächsKRG with effect from 20 January 1994, which gave cultural tasks the status of mandatory tasks

The 16 Länder have their own Parliamentary Committees and Ministries in charge of cultural affairs. Most of them still support and finance their own cultural facilities (such as theatres and orchestras, museums, libraries, monuments, music and visual arts academies) and formulate or implement policies for the promotion of the arts. The Standing Conference of Cultural Ministers acts as a platform for coordination and exchange among them. In some areas, the Bund and the Länder cooperate in cultural affairs, mainly in the form of financial support for *large foundations* and certain *national institutions*. According to constitutional provisions, national authorities have certain responsibilities in cultural affairs, directly and indirectly influencing the competencies of Länder, which were examined in 2003–2007 by the Commission of Enquiry of the Federal Parliament on Culture in Germany (*Enquete-Kommission "Kultur in Deutschland"*). According to Wiesand and Sorderman[35] in late XX and in early XXI centuries German cultural policies have been developed often through financing plans and single case granting (i.e. through the annual budgets by the Bundestag, the regional parliaments or city councils, funding for public cultural institutions), rather than through statutory laws reforming the legal framework. While a number of constitutions entrust this task to Länder themselves or counties *(Landkreise)* and municipalities *(Gemeinden)* to promote the arts and culture, financing issues have rarely resulted in specific laws. During that period, the Länder's total cultural expenditure decreased, whereas the rate of municipalities remained more or less stable. In contrast, the share of Federal Government expenditure nearly doubled between 1995 and 2007, from 8.1% to 14.7% of the total and has grown to 23.4% by 2021.[36] More recent tendencies are the choice of other legal forms (such as limited liability companies, associations, and foundations) for cultural institutions, the consequent reduction of budgetary and public service legal limits, the reduction of public funding, and the expansion of public-private partnerships in the financing of cultural activities.

strukturelle Parallelen zum Schutz der kulturellen Autonomie des Individuums über die Grundrechte auf, indem es die kulturelle Autonomie der Gemeinden schützt und so einen Beitrag zur kulturellen Diversität leistet.".

34 Ziefer, Anke (2010), 94.

35 Wiesand, Andreas Joh. (2010). *The German cultural governance system. Dreams and realities*. Economia della cultura, 20(2), 231-246; Söndermann, Micheal (2001). *Zur Lage der Kulturwirtschaft in Deutschland 1999/2000*. Jahrbuch für Kulturpolitik, 369-392.

36 Federal Statistical Office (12/2024): *Kulturfinanzbericht [Culture Financing Report]* 2024, p. 22.

The parliamentary inquiry on *Culture in Germany* has also been used by Mager and Wagner to analyse the cultural infrastructures in small and medium-sized cities in Germany, less traditionally focused than the cultural institutions of large cities.[37] The methodology of analysis is based on the distinction of nine cultural sectors (libraries, art schools, cinemas, art associations, museums, music schools, socio-cultural institutions, theaters and popular universities), grouped into three categories on the basis of content ("Everyday Culture and High Culture", "Reading and Art" and "Making Music and Educating Oneself"). The crucial role in the German model of small and medium-sized cities in the provision of differentiated cultural services and their great heterogeneity is emphasized. Based on 2017 data, it emerges that more than 64% of cultural infrastructure is located in small and medium-sized cities (more than 80% of music schools and popular universities and about 65% of libraries and museums). It is highlighted how infrastructures and cultural policies influence social cohesion, contribute to defining the role of medium-sized cities with respect to demographic challenges, the guarantee of essential public services, the promotion of social integration and the overcoming of urban territorial gaps. In one of the most interesting parts of the work,[38] it is emphasized that the density of cultural infrastructures is affected by the proximity and intensity of district relations between small and medium-sized centers and large cities: 32.87% of small and medium-sized cities with at least five cultural infrastructures are located within the range of large urban centers. The differences in the distribution of the nine institutional typologies in the Länder with the highest population and in the most rural Länder are also emphasized. The framework that emerges at the federal level is very differentiated, from small cities with very little infrastructure to medium-sized cities with all the infrastructural endowments of the types analyzed. This heterogeneity is traced back to the *"föderale Struktur von Kulturgovernance"*. However, the analysis presents, in the legal perspective that is preferred in this work, some strong limitations: the different Länder legal systems, the specific legal discipline of the nine types of cultural infrastructures, the governance models, the policies and legal tools for public and private financing, the rules on possible networks or aggregations of institutional and functional cooperation are not investigated, especially in county-networks of large cities and smaller towns.

3. State, Regions and local Public Bodies in Italian Cultural Heritage Law

Unlike Germany, the Italian constitutional system provides for the form of Regional State with Regions and local authorities.[39]

According to Chirulli,[40] within the Italian cultural heritage law *"The structure of the sources of law is asymmetrical, disorganised, with variable and graduated preceptivity, characterised by a high degree of complexity, sectoriality and specialty, linked in part to the peculiar constitutional status of the cultural heritage, in part to the way in which the disciplines have been formed over time, stratified and overlapped, often dictated by contingent needs, rather*

37 Mager, Wagner (2022), 379

38 Mager, Wagner (2022), 390-391.

39 About the cultural heritage protection in Italian legal system, with specific regard the distribution of competences between State, Regions and local authorities, see, *ex multis*, Barbati, Carla. Casini, Lorenzo. Cammelli, Marco. Piperata, Giuseppe. Sciullo, Girolamo (2017). *Diritto del patrimonio culturale*. Il Mulino, Bologna; Bartolini, Antonio (2013). *Beni culturali (diritto amministrativo)*. In: Annali-Enciclopedia del diritto, 6, Giuffrè, Milano, 93–132.; Manfredi, Giuseppe (2017). *Il riparto delle competenze in tema di beni culturali e la leale collaborazione*. Istituzioni del Federalismo, 3, 791-809; Scarlatti, Paolo (2018). *Beni culturali e riparto di competenze tra Stato e Regioni nella più recente giurisprudenza della Corte costituzionale*. Le Regioni, 46.4, 645-674; Mitrotti, Antonio (2018). Il riparto di competenze in materia di beni culturali alla luce del felice coniugio tra redditività del patrimonio culturale e diritto di accesso ai beni culturali. Rivista AIC, 4, 5-33; Chirulli, Paola (2019). *Il governo multilivello del patrimonio culturale*. Diritto amministrativo, 27.4, 697-741; Manganaro, Francesco (2024). *Osservazioni sulla disciplina dello spettacolo. A proposito di un libro recente*, Aedon, 3.2024; Kurcani, Klaudia (2024). *Le competenze in materia di spettacolo: tensioni (ancora) irrisolte tra centro e periferia*. Le Regioni, 1, 157-167. Sanchini, Francesco (2024). *Lo "spettacolo" nella perenne conflittualità tra Stato e Regioni: la Corte costituzionale prova (nuovamente) a mettere ordine*. Osservatorio costituzionale. 3(2024), 208–229; Pirozzoli, Anna (2023). *Le strategie di rilancio dei borghi nel processo di transizione digitale del PNRR*. AmbienteDiritto.it, 4/2023; Sau, Antonella (2016). *Il contributo della disciplina sulla tutel ae valorizzazione del patrimonio culturale alla costruzione dello stato unitario*. In: Chiti, Eduardo. Gardini, Gianluca. Sandulli, Aldo (Eds.), Unità e pluralismo culturale, VI, Firenze University Press, 355; Sau, Antonella (2023). *Beni e attività culturali tra Stato e Regioni: ciò che resta della stagione della regionalizzazione. Guardando alla prossima*. Aedon, 1/2023; Mone, Daniela (2016). *Il sistema delle fonti dei beni culturali tra giurisprudenza e prospettive di riforma costituzionale con particolare riferimento alla disciplina dei musei*. Costituzionalismo.it, 3/2016, 59–87. Immordino, Maria. Contieri, Alfredo (2023). *La disciplina giuridica dello spettacolo*. Giappichelli, Torino, 119.

40 Chirulli, Paola (2019), 699.

than inspired by a unitary design, functional to a better care of the assets. Regulation is articulated on several levels, often overlapping and intertwined, which do not always respond to the traditional hierarchical order and reflect the more general phenomenon of the growing complexity of the sources and the multiplication of centers of normative production".

According to Bartolini,[41] before the unification of the Kingdom of Italy, the first organic discipline set up to protect cultural heritage dates back to Cardinal Pacca's edict "On antiquities and excavations", published in the Vatican State on 7 April 1820. The edict was of fundamental importance as a "prototype" of the subsequent legislations adopted by the pre-unification states. In the post-unification period, after the first legislative interventions aimed at preserving the cultural heritage from the "negligence of the owners" and uncontrolled exports (including Law No. 4730 of 14 July 1887, concerning the protection of ancient monuments in the city of Rome and the "Nasi" Law, No. 185 of 12 June 1902), the two most important statutory reforms of general application were the "Rosadi" Act of 1909 (Law No. 364 of 20 June 1909) and the "Bottai" Act of 1939 (Law No. 1089 of 1 June 1939), dedicated to the protection of "works of art". These laws *"resulted ... based on an elitist and aestheticizing vision of the assets to be protected"* and were focused almost exclusively on the definition of protection tools and legal regimes of mere conservation, through "administrative police" powers (for example, introducing the regime of permit or license by the Ministry, the prohibition of modification in the absence of administrative permit, or to limit the commercial circulation of cultural goods, such as the right of pre-emption of the Ministry in the commercial sales of cultural property).[42] The Rosadi Act No. 1089/1939 was born in the context of the fascist legislation affirming national identity. The "public enjoyment of goods" referred to in Law No. 1089/1939 had in fact to be placed in the context of the "cultural policy" of the Fascist regime, which incorporated cultural topics (the protection of works of art, natural beauty and landscape, restoration, museums, exhibitions, modern art, artistic education) and the problems of their administration (both central and peripheral) in the political design of the ‚corporative reorganization' of the Italian State, with the confluence of private interests "neatly in the higher, summarizing interest of the Nation". The Bottai Act, maintaining the ‚defensive' connotation typical of post-unification legislative interventions, therefore set as its primary objective the "conservation, integrity and security" of cultural heritage in order to pass it on intact to future generations and carried out an authoritarian reform of the Rosadi Act, redefining the balance of public and private interests in favor of the state interest. The importance of the historical-artistic interest in discretionary-administrative decisions for the affixing of the constraint on private property, for expropriation for public utility, for the prohibition of export, was thus accentuated.[43] From an organizational point of view, the Bottai Act gave shape to the new administrative organization for the protection of cultural heritage, based on the principles of centralism and hierarchy. This was how the responsibilities of the Ministry of Culture and the ministerial network of national cultural institutes (the Central Institute of Restoration, the National Council of Education, Sciences and Arts) and the peripheral branches of the Ministry (the superintendencies) were defined.

In the Italian Constitution, entered into force in 1948, the main legislative reference in cultural matters is represented by Art. 9, which states: *"The Republic promotes the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation"*. According to Sau,[44] it is possible to observe a transition from a purely static-conservative conception of the protection of cultural heritage, understood as mere protection and safeguarding of the existing, to a dynamic conception oriented towards their public enjoyment, as assets naturally destined for public enjoyment and enhancement; tools for the cultural growth of society. However, analyzing the preparatory works of the Constituent Assembly, it can be emphasized that the debate focused above all, on the one hand,

41 Bartolini, Antonio (2013), 94.

42 Sau, Antonella (2016), 355–356: „The discipline of cultural heritage in post-unification and pre-republican Italy tells of the conflict between the public interest in the protection of cultural heritage and the legitimate aspirations of owners to exercise the *ius utendi atque abutendi* recognized by the civil code of 1865", which led to the failure of many parliamentary projects before the Nasi and Rosadi laws.

43 Sau, Antonella (2016), 358. Bartolini, Antonio (2013), 93–94: " The legal protection of things of art [...] it is conceived in terms of balance and balance, even in the logical and natural pre-eminence that must be given to artistic interest" (Grisolia, member of the Government Commission in charge to prepare the draft of Legge Bottai).

44 Sau, Antonella (2016), 360.

on the formulation of the second paragraph of Art. 9 and in particular on the need to extend the scope of public intervention as much as possible to all categories of public and private cultural heritage (monuments, natural landscapes, but also movable assets of historical-artistic value and collections) and, on the other hand, to mitigate the "risks" of a future "regionalization" of the cultural heritage law and to limit the new future space for local government. The first issue was addressed with the choice of the new expression *"landscape and the historical and artistic heritage of the Nation"*, which emphasized the unitary existence of a "national" heritage. The second issue led to the choice of attributing the tasks of protection to the "Republic", using an expression that, as provided for by Art. 114 of Constitution, included all the public institutional subjects of the new democratic legal order, and which would only later manifest its potential (in particular, decades later, when legal doctrine and constitutional jurisprudence renewed its meaning as an expression of institutional pluralism and subsidiarity, which also includes private subjects carrying out activities of social relevance). In this historical period, the decision to entrust the tasks of heritage protection to the Republic "as a whole, without distinction" allowed the future possibility of both State and regional interventions in the matter, but left the knot of the division of competences between the State, regions and local authorities completely unresolved, completely postponing (and without clear constitutional limits) the division of competences to subsequent statutory acts of Parliament.[45] At the same time, other articles of the Constitution outlined the protection of "cultural pluralism" in the new Italian legal order: Article 5 of Italian Constitution stated that "The Republic is one and indivisible. It recognises and promotes local autonomies, and implements the fullest measure of administrative decentralisation in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralization". Article 6 affirmed the protection of linguistic minorities. Articles 8, 19 and 20 proclaimed freedom of worship and freedom of religious denominations. Article 21 affirmed freedom of expression and limited, in the third paragraph, freedom of artistic expression only for reasons of "defence of morality". Art. 33 proclaimed, in the first paragraph, the freedom of art and science and their teaching and, in the third paragraph, the right of institutions of high culture, universities and academies to self-organize with "autonomous bylaws", within the limits of national laws. Title V (Art. 114–133) introduced the new regional organization, which, however, was implemented only decades later, starting in 1970, after the approval of Law No. 108 of 17 February 1968. The new Title V was limited, in Art. 117, to provide for the "shared competence" of the Regions in the field of "museums and libraries of local authorities" and "tourism".

In the 1960s, the second paragraph of Art. 9 was supplemented in a systematic manner in the light of the other provisions of the Constitution. In the light of the first paragraph, and of the "personalistic" and "substantial equality" principles, it has been stated that "in a system that wants to be democratic not only in a formal sense ... and therefore precisely the perfection of the personality of all the associates and the material and spiritual progress of society in its entirety (Articles 1–4 of the Constitution), the objectives of the development of culture... they are clearly placed as instrumental; and with respect to them, the protection, by the public authorities, of the landscape, artistic and historical heritage of the country is revealed, in turn, as a means to the end"[46]

The rethinking of all the issues of Italian cultural heritage law and the potential of Article 9 of the Constitution, with the new formulation of the concept of "cultural heritage" as "material testimony having the value of civilization" (overcoming the definition of "things of art"), began with the work of two ministerial commissions, the *Commissione mista per la tutela del paesaggio e la valorizzazione del patrimonio artistico e culturale* in 1956 and, above all, the *Commissione d'indagine per la tutela e la valorizzazione delle cose di interes se storico, archeologico, artistico e del paesaggio* in 1964 (so called "Commission Franceschini"[47] The Franceschini Commission did not conclude its work with the preparation of a draft law to reform this sector. However, it laid the "guidelines" for the Decree-Law No. 657 of 14 December 1974, which established the new Ministry of Cultural Heritage, with powers of regulation and governance for museums, archeological sites, monuments, libraries, and cultural institutions. The Italian Ministry of Culture started to manage local tasks with national general Ministry departments (directorates-general),

45 Bartolini, Antonio (2013), 126; Sau, Antonella (2016), 360–361; Chirulli, Paola (2019), 701; Scarlatti, Paolo (2018), 650
46 Manfredi, Giuseppe (2017), 794.
47 Bartolini, Antonio (2013), 94; Sau, Antonella (2016), 362; Manfredi, Giuseppe (2017), 796.

regional (regional directorates) and local Ministry departments ("soprintendenze", superintendencies).[48] The Decree succinctly defined in Art. 2(1) the tasks of the Ministry, introducing the key-distinction, in the Italian legal system of this sector, between the *protection* and the *enhancement* of cultural heritage (*"The Ministry provides for the protection and enhancement of the country's cultural heritage"*). The Decree did not provide indications on the powers of Regions and local authorities in this sector, but was limited, to Art. 2(4), to refer to external rules on regional competences, if they exist (*"Without prejudice to regional competences"*). After the regional system became fully operational in 1970, Regions and local authorities began to solicit the assignment of tasks. The Government, by Presidential Decree No. 3 of 14 January 1972 and Decree No. 616 of 24 July 1977, transferred to the Regions the powers in the field of "museums and libraries of local authorities" and, subsequently, by Legislative Decree. 112 of 31 March 1998, Articles 150 and 152 established the maintenance at the national level of the functions of protection and the sharing with the Regions and local authorities (according to the principle of loyal collaboration) of the functions of management (aimed at collective use) and enhancement.[49] The accumulation and overlapping of statutory acts and decrees required the adoption of a *Consolidated Act*, which was adopted with Legislative Decree No. 490 of 29 October 1999. The Consolidated Act of 1999, in Art. 11, confirmed the division of competences defined by Legislative Decree No. 112 of 1998.

According to Sau, Manfredi, and Scarlatti,[50] in the following years, the reforms of the discipline of cultural heritage have substantially *"revolved around the State-autonomies dialectic"*, with the relevant contribution of the jurisprudence of the Italian Constitutional Court.

The Constitutional Court, in its judgments of the 80s and 90s of the last century, started from the observation of the reduced space reserved to regional law by the original Art. 117 of the Constitution. Despite this, it began to anchor in Art. 9 of the Constitution the prospects of participation in the cultural heritage sector by the territorial autonomies. The Court urged the legislator to carry out the necessary reforms for a better delimitation of the division between state and regional competences,[51] stigmatizing the non-implementation of the duty provided for by Art. 48 of Presidential Decree No. 616 of 1977, to define by a new statutory act the administrative functions of the regions and local authorities, with regard to the *"protection and enhancement of the historical, book, artistic, archaeological, monumental, paleo-ethnological and ethno-anthropological heritage, because the regulatory framework on the distribution of state and regional competences was seriously incomplete and uncertain"*. The Court pointed out that in this matter there were still largely laws in force prior to the establishment of the regional system and that it was necessary to define "adequate connections and cooperative conduct between the State, regional and local offices". In subsequent decisions,[52] the Constitutional Court, with reference to the matter of *"museums and libraries of local authorities"*, while pointing out the possible dichotomy between national interest and local interest, again on the basis of the Decree of the President of the Republic of 24 July 1977, No. 616, began to suggest the need to identify arrangements and agreements of "loyal collaboration".[53]

At the beginning of the new millennium, Title V of the Constitution was the subject of constitutional revision with the Constitutional Law of 24 October 2001, 3, which transposed and

48 The Decree-Law No. 657 of 14 December 1974 it did not fully define the administrative organization of the Ministry. The central and peripheral bureaucratic organization of the Ministry has been defined by a series of subsequent reforms, including the Decree of the President of the Republic of 3 December 1975, No. 805, the Legislative Decree of 20 October 1998, .No. 368 and the Decree of the President of the Republic of 26 November 2007, No. 233.

49 Mitrotti, Antonio (2018), 9; In this context, regional tasks were envisaged for participation in the procedures for the *identification* of cultural heritage (ministerial declaration of cultural value, formation of regional lists and catalogues); cooperation in supervision; cooperation in the management of book heritage; cooperation in relations with denominations for the management of religious heritage; conservation and management of archives; joint financing of restorations; loans for exhibitions and exhibitions; exhibitions; organization of use services; adoption of territorial landscape and environmental plans; authorizations for private interventions on landscape assets.

50 Sau, Antonella (2016), 364; Manfredi, Giuseppe (2017), 796. Scarlatti, Paolo (2018), 646ff.

51 Constitutional Court, Judgment No. 278 of 12 June 1991.

52 Constitutional Court, Judgment No. 339 of 22 July 1994.

53 Manfredi, Giuseppe (2017), 800. The Constitutional Court, in its judgment No. 921 of 1988, had observed that Art. 2 of Presidential Decree No. 805 of 1975 was to be considered intended to make ‚operative in the matter the principle that this Court has consistently affirmed, with respect to similar situations inherent in relations between the State and the Regions: that of loyal cooperation; cooperation; consensus within the activities".

constitutionalized the distinction between *protection*[54] and *enhancement*.[55] The new Article 114 states that *"The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution"*. Article 117 distinguishes the statutory tasks of State (Parliament and Government) and Regions: *"Legislative powers shall be vested in the State and the Regions in compliance with the Constitution…The State has exclusive legislative powers in the following matters: … protection of the environment, the ecosystem and cultural heritage. Concurring legislation [Regions] applies to the following subject matters: …enhancement of cultural and environmental properties, including the promotion and organisation of cultural activities"*. Article 118 states that *"(1) Administrative functions shall be vested into municipalities, unless they are attributed to provinces, metropolitan cities and regions or the State, pursuant to the principles of subsidiarity, differentiation and proportionality, in order to ensure uniform implementation. (2) Municipalities, provinces and metropolitan cities shall have own administrative functions in addition to any functions assigned to them by State or regional legislation, according to their respective competences"* and, in particular, *"(3) State legislation shall provide for coordinated action between the State and the Regions in the fields under Article 117, paragraph two, letters h) and h) above and also provide for agreements and coordinated action in the field of the preservation of cultural heritage"*.[56] Finally, Article 116 (3) states that *"Additional special forms and conditions of autonomy, relating to the areas specified in Article 117… second paragraph … letters n)* [education] *and s)* [protection of the environment, the ecosystem and cultural heritage] *…, may be attributed to Regions by State Law, upon the initiative of the Region concerned, after consultation with the local authorities and in compliance with the principles under Article 119 below. Such State law shall have to be passed by an absolute majority of members in both Houses of Parliament and on the basis of an agreement between the State and the Region concerned"*.

According to Chirulli,[57] the overall framework of the constitutional norms maintains a certain degree of contradiction. On the one hand, Art. 117 attributes the "protection" exclusively to the State, but provides for a concurrent competence for "enhancement"; on the other hand, there is the provision contained in Art. 118, third paragraph, according to which the state law regulates *models of agreement and coordination between the State and the Regions* "in the field of the protection of cultural heritage" too. Then

54 According to Bartolini, Antonio (2013), 94, and Barbati, Carla. Casini, Lorenzo. Cammelli, Marco. Piperata, Giuseppe. Sciullo, Girolamo (2017), the term „protection" essentially consists in the exercise of administrative powers aimed at conserving and safeguarding material cultural heritage (custody, supervision, study and research, restoration. This includes the administrative powers instrumental to these activities, such as the possibility of awarding works and services through procurement procedures, outsourcing, partnerships), which also consist of the power to conformation and ablation of private cultural property, as well as the exercise of sanctioning powers. It has thus been proposed that protection includes „any discipline that has the effect of regulating, limiting, inhibiting, or in any case conforming or, if necessary, completely excluding the conduct of public or private entities so that it is not prejudicial [...] not only for the physical integrity of the assets and conservation in the strict sense, but more generally for the guarantee of that cultural value that constitutes the aspect of public interest legally protected by the legal system". Among the powers of conformation, the most important is aimed at authorizing interventions on restricted private assets and is so penetrating that it can exclude any modification or new construction, but we can also mention the prohibitions on extra-national circulation, on the display of „fragile" assets. Among the ablative powers, the most important is the expropriation of private cultural property, but we can also mention the „temporary occupation" for study purposes and the search for pre-emption in the case of sales between private individuals.

55 According to Bartolini, Antonio (2013), 122, Manfredi, Giuseppe (2017) and Barbati, Carla. Casini, Lorenzo. Cammelli, Marco. Piperata, Giuseppe. Sciullo, Girolamo (2017) the term „enhancement" includes, in a first sense, all activities that are related to the increase in the economic quality of the asset, „in forms compatible with protection and such as not to prejudice its needs". According to a different meaning, enhancement should rather be understood as „regulation of activities aimed at promoting knowledge of the cultural heritage and ensuring the best conditions for the use and public enjoyment of the heritage itself", including the promotion and (economic) support of cultural heritage conservation interventions. On the basis of constitutional jurisprudence, it is possible to define a broader or narrower meaning of valorisation: valorisation in the broad sense would have a residual role, covering everything that is not protection; that in the strict sense would only include the use and financing of the management (protection) activities of the assets.

56 As Manfredi observes, Giuseppe (2017). 798, In the 2001 reform, the parallelism between legislative and administrative functions was then lost, given that in accordance with Art. 118 administrative functions must be allocated according to the principle of vertical subsidiarity, in the hands of the level of government closest to the citizens – without prejudice, however, to the application of the other two principles that accompany subsidiarity, namely adequacy and differentiation. The dissolution of this parallelism in the name of vertical subsidiarity (the recognition of regulatory powers in this field to the Regions) has been particularly problematic and not realized in the field of cultural heritage law, with the support, as we will see later, of the Constitutional Court.

57 Chirulli, Paola (2019), 704.

"an *ad hoc* and *sui generis* vertical subsidiarity" *is achieved* in the Italian legal discipline of cultural heritage, also with reference to protection, which seemed to be peacefully brought back to the national level. The provisions of Articles 117 and 118 become susceptible to opposite readings, both as rules aimed at protecting the level of national competence, requiring a loyal "weak" collaboration (which is mainly exhausted in the procedural disciplines of prior consultation), and as rules that would guarantee the Regions a necessary space for participation, requiring a loyal collaboration of the so-called "strong" type (through the recognition of the necessary role of interinstitutional agreements). The constitutional text recognizes the principle of loyal collaboration or cooperation as immanent, which, however, is subordinated to the adoption of specific legal provisions to regulate the cases of application, and which has been implemented only partially and laboriously. The ambiguity of the constitutional norms is accentuated by Art. 116, paragraph 3, which allows, precisely in the matter of the protection of cultural heritage, the attribution of further forms of autonomy to the Regions, opening the way (not yet traveled) to *a differentiated cultural regionalism*.

The matter has therefore been the subject of a new profound rearrangement, with the new *Code of Cultural Heritage*, adopted with Legislative Decree No. 42 of 22 January 2004. The State is thus recognized as having a legislative power that goes beyond the definition of the general principles of the matter, if it is called upon to regulate the function of enhancing state cultural heritage (Article 7, paragraph 1) and also a regulatory power that would not belong to it in the matter as the holder of a concurrent and non-exclusive legislative power. As regards the allocation of administrative functions, it is confirmed that the function of protection "for the needs of unitary exercise" is attributed to the Ministry. On the other hand, management is absorbed into the valorisation function whose exercise, in line with Legislative Decree No. 112/2008, is attributed to each public entity. Net of the use of the instruments of interinstitutional coordination and cooperation (see Sections 5, 6, 7, 112 of the Code) which represent the model for the division of administrative competences between the State, the Region and local authorities in the field of cultural heritage, the difficulty of defining with certainty, on the one hand, the boundaries between protection and enhancement[58] is confirmed; on the other, the areas of state, regional and local competence. The reference to the principle of loyal cooperation, in particular in Art. 112 of the Code, is thus understood both in a ‚defensive' meaning, as a tool for the resolution of conflicts between the different levels of government, and in a ‚propulsive' meaning, as a tool for the promotion and economic enhancement of cultural heritage, also and above all locally.[59]

After the constitutional reform, the Constitutional Court has also reinterpreted the framework of competences between the State, the Regions and local autonomies. In its first decisions after the constitutional reform, the Court affirmed the continuity between the previous national legislation, Decree No. 112/1998, and the constitutional reform: *"because a line of continuity can be identified between the legislation of the years 1997–1998, on the conferral of functions to local autonomies, and the Constitutional Law No. 3 of 2001"*.[60]

Part of the cases concerned the function of protection, fragmenting the typologies of traditional cultural heritage assets provided for in the 1999 Consolidated Act first, and then in the 2004 Code, and arriving at non-univocal solutions in concrete cases in which functions of protection and enhancement are closely intertwined. The Court, while rigorously interpreting the constitutional attribution criterion and defending the area of competence reserved to the State, has sometimes made a certain extension of the space of intervention allowed to the Regions. For example, it has developed the notion of

58 As we have seen, the boundaries between one and the other are differently reconstructed, on the basis of the name of the 2004 Code and constitutional jurisprudence. According to Bartolini, Antonio (2013), 122, „on closer inspection, the jurisprudence that has just been examined is not wavering, but reflects the ontological and polymorphous nature of cultural heritage. When dealing with extra-code cultural assets, the Constitutional Court welcomes a broad notion of enhancement, such as to almost include protection, as the state legislator is not interested in these assets, leaving the Regions substantially free. Where, on the other hand, reference is made to the cultural heritage of the Code, protection expands to such an extent that it also encroaches on valorization, since state legislation, both through exclusive and concurrent power, severely limits the power of intervention of the Regions'. See more Barbati, Carla. Casini, Lorenzo. Cammelli, Marco. Piperata, Giuseppe. Sciullo, Girolamo (2017).

59 Sau, Antonella (2013), 365

60 Sau, Antonella (2023). Constitutional Court. Judgments No. 94 of 28 March 2003, No. 9 of 13 January 2004

"asset of cultural interest", which would be distinct from the "traditional assets of cultural interest statutory protected (by the national legislation)," and on which the Regions could provide both forms of protection and enhancement.[61] At other times, the Court has underlined that the Regions could never introduce alternative protection instruments for traditional cultural goods governed by the Code, being able to address only those non-traditional assets, but which may present *"albeit residually, some ‚cultural' interest for a given territorial community, thus providing a different and additional protection regime"*.[62] However, the distinction between traditional cultural goods and cultural goods *"with a different and additional protection regime"* has not always led the Court to open up to the Regions, especially in the case of very generic classifications of *"non-traditional cultural goods"*. Some decisions have emphasized the need for *"the State to remain unequivocally attributed, for the purposes of protection, the discipline and the unitary exercise of the functions intended for the identification of the assets constituting the cultural heritage as well as their protection and conservation and, instead, also to the regions, for the [sole] purpose of enhancement, discipline and exercise of functions aimed at the better knowledge and use and enjoyment of that heritage"*, and declared illegitimate a regional law for the identification of *"artifacts and historical relics not included among the protected cultural heritage"*, contesting the generic nature of the clause with which the regional legislation intended to avoid overlapping with national legislation.[63] On the other hand, as regards to the administrative functions where protection and enhancement are closely linked, while generally reaffirming the concurrent competence for valorisation, the Court has legitimised phenomena of "centralisation", deeming the very detailed national rules (and very preponderant state competences) of valorisation to be legitimate, provided that they refer to assets owned by the State. [64]However, the Court, following a partially different orientation, in other decisions, while maintaining the distinction between protection and enhancement, has required an agreement between the State and the Regions where the matter of protection is linked to a regional competence, but above all it has affirmed that the "ontological and teleological contiguity" existing between the functions of protection and enhancement entails "a situation of concrete concurrence of the exclusive competence of the State with that concurrent of the State and the Regions". This led the Court to declare the impugned rules unconstitutional in the part where they did not provide for the agreement between the State and the Regions.[65]

In other decisions, the Court delimits the boundaries between the activities of "enhancement of cultural heritage" and those of "promotion and organization of cultural activities", provided for by the third paragraph of Article 117 of the Constitution.[66] The second category, broader, includes *"all activities attributable to the elaboration and dissemination of culture, without there being room to carve out individual partitions such as the spectacle"* (on the specific discipline of the performing arts, see below). On the distinction between protection and enhancement, the Court recently affirmed that the scope of protection includes "the regulation and legal administration" of cultural heritage (with particular attention to protection and conservation measures). Enhancement is responsible for the regulation of the "anthropic activity on the asset" or the definition *"of the complex of supplementary and further improvement intervention activities, aimed at*

61 Constitutional Court, Judgment No. 94 of 28 March 2003. The Court had to evaluate the Lazio Regional Law of 6 December 2001, No. 31 on the „Protection and enhancement of historic premises". According to Sau, Antonella (2023), the Court, after observing that the functions inherent in cultural heritage that can be inferred from the legislation in force do not concern „other assets which, for the purposes of enhancement, may be recognized as particular historical or cultural value by the regional or local community, without this entailing their qualification as cultural goods", „resolved the conflict of competences outside the protection/enhancement binomial, that is, shifting the focus from the „type" of intervention to the „good" through the re-proposal of the thesis of an „open and variable" notion of cultural heritage in relation to the „differentiated legal regimes provided for by the individual laws that enrich its typology from time to time. It follows that the choice of the regional legislator to include commercial and craft establishments open to the public that have a historical, artistic, environmental value and whose activity constitutes historical, cultural and traditional testimony also with reference to ancient crafts in a dedicated regional list, in order to access funds for their enhancement and to support the expenses related to the increase in rents, it does not encroach on the state competence in the field of protection which presupposes the subjection of the property to a binding regime limiting the right to property". Scarlatti, Paolo (2018), 657. Manfredi, Giuseppe (2017), 802.

62 Constitutional Court, Judgment No. 232 of 16 June 2005. Scarlatti, Paolo (2018), 655. Manfredi, Giuseppe (2017), 803.

63 Constitutional Court, Judgment No. 194 of 03 July 2013. Manfredi, Giuseppe (2017), 804.

64 Constitutional Court, Judgment No. 26 of 20 January 2004. Scarlatti, Paolo (2018), 656.

65 Constitutional Court, Judgment No. 140 of 9 June 2015. Scarlatti, Paolo (2018), 666ff.; Manfredi, Giuseppe (2017), 804.

66 Constitutional Court, Judgments No. 255 of 21 July 2004 and No. 285 of 19 July 2005.

promoting, supporting the knowledge, use and conservation of the cultural heritage, as well as ensuring the best conditions for its use, including by people with disabilities".[67]

According to Sau, the constitutional jurisprudence of the last twenty years *"tells us of a slow process of recentralization... with different arguments and mechanisms (from the "tasks" understood as "fields" to transversal national competences, from the attraction in subsidiarity to the criterion of prevalence) and the consequent marginalization of the role of regional autonomies that in the cultural heritage sector have paradoxically found the greatest space to develop outside the protection/enhancement binomial (Sentence No. 94/2013) before being "caged" by the principle of loyal collaboration (Sentence No. 140/2015)".*[68] Thus, it is underlined, *"The rigid perimeter of the legal boundaries of cultural heritage has so far prevented constitutional jurisprudence from dealing with everything that moves around the world of cultural heritage and that transcends the boundaries of traditional cultural activities, starting with the new expressions of contemporary creativity (from food to street art) that are beginning to knock forcefully on the doors of the "right of cultural heritage" clashing with a discipline of protection of intangible cultural heritage filtered by the requirements of "materiality" and "cultural" ... domain, of the state legislature. And it is therefore easy to predict that it is precisely on these borders that the confrontation between the State and territorial autonomies will soon move, perhaps renewing itself with new contents".*[69]

By 2014, the national museums are almost independent departments of Ministry of Culture, following the reform initiated by Decree Law No. 66 of 24 April 2014, by Decree of the President of the Council of Ministers (DPCM) of 29 August 2014 No. 171 and by Ministerial Decree (DM) of 23 December 2014. With the reform, national museums acquire the status, in some cases, of autonomous national directorates-general, in other cases, of non-general-level directorates (linked to regional directorates), all directly linked to the Ministry's General Directorate of Museums, but above all, autonomous subjects with respect to the Superintendencies. The reform has created a "territorial network" of museums with a new autonomy. The reform has operated in a double direction: on the one hand it has strengthened the central structure, with the establishment of the General Directorate of Museums, on the other hand it has made the peripheral structures autonomous, separating the "new" Museums from the Superintendencies. A complex architecture is outlined, consisting of an imposing central administration (the General Secretariat and the General Directorates), an articulated peripheral administration (Museums and Regional Directorates), and some satellite advisory bodies (The Superior Council of Cultural and Landscape Heritage and some Technical-Scientific Committees).[70] As has been observed,[71] the reform has sought to redefine the relations between the State, regions and local authorities, overcoming not only the perspective of separation/opposition between levels of government, but also that of cooperation/collaboration, in favour of an integration approach. The heart of this reorganization has been identified in the creation of a *National Museum System*, integrating *regional museum* poles and *"mixed museum systems"*, consisting of state museums, other regional and local public administrations, non-state museum institutions, and private individuals, with the aim of enhancing pre-existing non-state museums, such as civic museums. In fact, in addition to state museums, all other museums belonging to the public or private sector, including science museums, university museums and demo-ethno-anthropological museums, are intended to be part of the national museum system, in compliance with the standards provided for by the Ministerial Decree of 21 February 2018 of *"Adoption of uniform minimum quality levels for museums and places of culture belonging to the public and activation of the national museum system"* and D.M. June 20, 2018. The next few years will be able to indicate whether the creation of the National Museum System has identified new forms of organization of the competences of the State, the Regions and local authorities for the protection and enhancement capable of overcoming the dichotomies and aporias now consolidated in the system of the sector.[72]

67 Constitutional Court, Judgment No. 138 of 6 July 2020.

68 Sau, Antonella (2023), 8.

69 Sau, Antonella (2023), 12.

70 On the 2014 Museums Reform, see, *ex multis*, Ferrara, Luigi. Lucarelli, Alberto. Savy, Daniela (Eds.) (2017). *Il governo dei musei. Tra Costituzione, funzione sociale e mercato.* Editoriale scientifica, Napoli, 2017; Casini, Lorenzo (2014). *Il „ nuovo" statuto giuridico dei musei italiani.* Aedon, 3(2014); Mone, Daniela (2016). 61ff.

71 Morbidelli, Giuseppe (2021). *Italian civic museums between tradition and innovation.* Aedon, 1(2021), 45–53; Piperata, Giuseppe (2021). *Non-state public museums.* Aedon, 1(2021), 54–61.

72 Mone, Daniela (2016). 85–87

In this brief analysis, it was not possible to dwell on the peculiarities of some cultural sectors, such as the entertainment sector, where significantly different rules and organizational models are affirmed. Very briefly, it can be observed that "the subject of the spectacle is among those in which the pre-republican approach is most felt".[73] The term "entertainment" in Italian legislation includes "artistic activities and initiatives in the fields of cinematography, music, dance, theater, traveling and circus shows". In the liberal period, its legal regulation was mostly restrictive, since the performance of performances and "entertainments" was subject to strict controls, both preventive and repressive, by the public security authority. In the twenty years of fascism there was a massive intervention of the State in the entertainment industry, with an articulated system of public support (and control), especially to the nascent film industry. In the Republican age, in the absence of an exact constitutional definition of the matter, its protection was traced back to the free expression of thought referred to in Art. 21 of the Constitution or to the cultural promotion referred to in Art. 9 of the Constitution. The involvement of the Regions in the regulation and promotion of entertainment has been a constantly debated issue within the regulatory evolution of the sector, starting from the fact that the original text of Art. 117 of the Constitution did not mention it. The aforementioned Presidential Decree 616 of 1977 provided for the adoption of a subsequent law the "reorganization of regional and local functions" on "prose, musical and cinematographic activities", which was never approved. On the contrary, Law No. 163 of 30 April 1985, which established the F.U.S. (Single Fund for the Performing Arts), centralized public funding of this sector at the state level. The above-mentioned legislative decrees No. 112/1998 and No. 368/1998 assigned a completely marginal role to the Regions in this matter and strengthened the role of the Ministry of Cultural Heritage. After the constitutional reform, even the new Art. 117 does not introduce the explicit mention of the subject "entertainment". Thus, the Constitutional Court has been able to interpret the matter under the *residual* legislative competence of the Regions (Art. 117(4)), confirming their completely marginal role, and interpretations that recall the *concurrent* competence in terms of enhancement. However, even in the case of recognition of the matter within the scope of the concurrent regional competences for enhancement, the constitutional judge has often legitimized a consistent "presence" of state legislation and ministerial competences in the sector, due to the "structural inadequacy" of the regional level of government to satisfy the performance of the complex activities of discipline and financial support. In any case, this jurisprudence has always underlined the necessary respect, in any case of attraction of functions at central level, of the principle of loyal collaboration with the Regions.[74]

Finally, it is necessary to underline that it is precisely the sectoral legal framework specific to this sector that has allowed the Constitutional Court to analyze whether *"Maßnahmengesetze"* for the financing of culture are admissible, which are in contrast with an ordinary general system of ordinary financing (in this specific case, the "Single Fund for the Performing Arts", FUS).[75] According to the Constitutional Court, an ad hoc financing provision contained in a national law, which is aimed at a specific cultural institution (in this case, the "Eliseo" Theater in Rome) determines a difference in treatment to the detriment of other companies that carry out prose theatrical activities, which can all, on equal terms, apply for access to the "Single Fund for the Performing Arts" and which, with the offer of their cultural services, they all address the same catchment area (the theatrical audience). This contribution would

73 Manganaro, Francesco (2024); Immordino, Maria. Contieri, Alfredo (2023), 119; Kurcani, Klaudia (2024), 123; Sanchini, Francesco (2024), 208.

74 It is worth mentioning, ex multis, the decision of the Constitutional Court of 8–21 July 2004, No. 255. According to the Court, the matter of the „enhancement of cultural and environmental heritage and promotion and organization of cultural activities", of concurrent legislation, is „undoubtedly" able to include actions to support performances. For the constitutional judge, in fact, Art. 117, third paragraph, of the Constitution. it mentioned this matter „without any exclusion" and considering only the limits that may derive, indirectly, from matters of exclusive state competence such as, for example, „education" or „protection of cultural heritage". „cultural activities" actually concern any activity concerning the elaboration and dissemination of culture, „without there being any room to carve out individual partitions such as entertainment". The sentence definitively rejects the interpretative position that configured a residual competence for the Regions. The matter was also the subject of a recent ruling by the Constitutional Court, in line with the aforementioned guidelines, Constitutional Court, 17 October 2023, No. 193.

75 C.Cost., Judgment of 26 April 2022, No. 186. Tripodi, Ludovica (2022). *The Court declares the „extra-FUS" funding to the Eliseo theater „incongruous", „disproportionate" and capable of distorting free competition*. Nomos, 3-2022.

therefore turn out to be an illegitimate subsidy, capable of distorting competition, because it is extraneous and additional to the allocation of resources within the *Single Fund for the Performing Arts*, qualifying as "extra-FUS" resources.

4. The Saxon Cultural Areas Act. Main issues in comparative perspective

As noted in the first paragraph of this paper, according to Wiesand and Sorderman[76] in late XX and in early XXI centuries German cultural policies have been developed often through financing plans and single case granting (i.e. through the annual budgets by the *Bundestag*, by the Länder parliaments or by the city councils, funding for public cultural institutions), rather than through statutory laws reforming the Länder legal framework. While a number of Länder constitutions entrust this task to Länder themselves or counties (urban and shire) and municipalities to promote the arts and culture, financing issues have rarely resulted in *specific statutory frameworks*.

One of the notable exceptions to this trend in the late 20th and early 21st centuries has been the statutory Act *on the Cultural Areas in the State of Saxony (Kulturraumgesetz)*, which will be analyzed in this paragraph. Originally enacted in 1993 for a decade, it has been renewed twice, extending its validity. The law allocates nearly 90 million euros from the state budget of Saxony to nine rural and three urban "Areas" *(Räume)* to promote cultural institutions.

It is important to understand the genesis of this law. At the time of reunification, cultural enthusiasts succeeded in enshrining this right in Article 35 of the Unification Treaty, as Chancellor Kohl had already announced in principle during his visit to Dresden in December 1989.[77] On the basis of Article 35 (2) 'Cultural substance' and 35 (7) 'Cultural infrastructure', the Kohl government decided on 14 November 1990 to implement a programme to preserve cultural substance and a second programme to preserve infrastructure for a period of two years, which was then extended in 1993 and ended on 30 June 1994. The Free State of Saxony had already gradually taken over the financing of state cultural institutions, so that the funds flowed entirely into municipal culture in 1993 and 1994. They were supplemented by the Free State with a final amount of DEM 30 million. But how to replace the previous DEM 60 million from the federal programmes that were being discontinued? Matthias Theodor Vogt made a proposal: by deducting 1% in advance from the municipal financial equalisation fund, i.e., from the total amount of tax revenue for the benefit of the municipalities and *Landkreise*. At the time, this amounted to DEM 6 billion, of which the aforementioned DEM 60 million was 1%. This decision, which was completely unique in the legal history of the Federal Republic of Germany, meant that all mayors and *Landräte* waived one per cent of their funds in a unique show of solidarity to jointly save the cultural infrastructure of Saxony's municipalities. Since the particularly expensive municipal cultural institutions, such as the world's largest symphony orchestra with almost 200 musicians, the Leipzig Gewandhaus Orchestra, were located in the large cities, most of the funds went there – it is particularly

76 Wiesand, Andreas Joh. (2010). *The German cultural governance system. Dreams and realities*. Economia della cultura, 20(2), 231–246; Söndermann, Micheal (2001). *Zur Lage der Kulturwirtschaft in Deutschland 1999/2000*. Jahrbuch für Kulturpolitik, 369–392.

77 The Unification Treaty *Enigungsvertrag* was signed on 31 August 1990 and came into force on 3 October 1990. Art. 35 (1) During the years of division, art and culture were a foundation of the continuing unity of the German nation, despite the different developments of the two states in Germany. They make an independent and indispensable contribution to the process of German national unity on the path to European unification. The position and reputation of a united Germany in the world depend not only on its political weight and economic power, but also on its significance as a cultural state. The primary goal of foreign cultural policy is cultural exchange based on partnership and cooperation. (2) The cultural substance in the territory referred to in Article 3 shall not be impaired. […] (7) To compensate for the effects of the division of Germany, the Federal Government may, on a transitional basis, co-finance individual cultural measures and institutions in the territory referred to in Article 3 in order to promote the cultural infrastructure. | Art. 35 (1) In den Jahren der Teilung waren Kunst und Kultur - trotz unterschiedlicher Entwicklung der beiden Staaten in Deutschland - eine Grundlage der fortbestehenden Einheit der deutschen Nation. Sie leisten im Prozeß der staatlichen Einheit der Deutschen auf dem Weg zur europäischen Einigung einen eigenständigen und unverzichtbaren Beitrag. Stellung und Ansehen eines vereinten Deutschlands in der Welt hängen außer von seinem politischen Gewicht und seiner wirtschaftlichen Leistungskraft ebenso von seiner Bedeutung als Kulturstaat ab. Vorrangiges Ziel der Auswärtigen Kulturpolitik ist der Kulturaustausch auf der Grundlage partnerschaftlicher Zusammenarbeit. (2) Die kulturelle Substanz in dem in Artikel 3 genannten Gebiet darf keinen Schaden nehmen. […] (7) Zum Ausgleich der Auswirkungen der Teilung Deutschlands kann der Bund übergangsweise zur Förderung der kulturellen Infrastruktur einzelne kulturelle Maßnahmen und Einrichtungen in dem in Artikel 3 genannten Gebiet mitfinanzieren.

commendable that the mayors of the small municipalities and the *Landräte* were well aware of this. It is therefore too simplistic to talk about DEM 90 million in state funds: DEM 30 million came from the actual state budget, while DEM 60 million was owned by the municipalities, which replaced the federal funds that were now lacking. Of this DEM 90 million, around DEM 60 million went to the three major cities of Leipzig, Chemnitz and Dresden, and around DEM 30 million to rural cultural areas. The latter were equalised by the cultural levy of the cultural areas, the second genuine solidarity contribution by the Saxon municipalities. In the end, a precise calculation presented by Matthias Theodor Vogt showed that the state's share in the funding of municipal cultural infrastructure amounted to just 17 percent, with the municipalities themselves providing the lion's share of the subsidy requirement of 83 percent. This is a record even within the Federal Republic.

The Saxon Cultural Areas Act (SächsKRG) came into force thirty years ago on August 1, 1994. The §10 of the Act, in its original version, provided for the cessation of the effects of the law *(Außerkrafttreten)* after 10 years, on July 31, 2004. The provision of a ten-year term, in order to verify the impact of the Act and any problems of compatibility with the principle of *Selbstverwaltung* of local authorities, was suggested in an in-depth legal study elaborated on the draft law during the process of approval, which conditioned its final physiognomy and admirably summarized the most relevant legal issues concerning the legal framework of the cultural system both in the German Federal System and in Saxony law.[78] In the following decades, having verified the success of the institutional model of support for culture introduced by the law, the term for the cessation of effects was first extended several times and then suppressed.[79] It is not possible, in the economy of this paper, to analytically reconstruct the content of all the individual act reforming the SächsKRG.[80]

In its current text, the Saxon Cultural Areas Act consists of 11 paragraphs. The law is introduced by a *Preamble*, which, on the one hand, underlines the freedom of intellectual life and the freedom of the arts, on the other hand, it stresses that, after completion of the transitional financing for culture in accordance with the German Unification Treaty, both "supplementary support" and new "legal tools" are required for municipal cultural institutions, to establish "new and financially viable organizational and service structures", the *cultural areas*, on the basis of Articles 1 and 11 of the Saxon Constitution.[81] The §1 provides for the establishment of cultural areas as *"special-purpose associations"*, *"in order to maintain and promote cultural institutions and measures"*. Five "rural" (shire counties[82] and small municipalities are

78 Ossenbühl, Fritz (1996). *Kommunale Kulturpflege und legislative organisational sovereignty*. In: Vogt, Matthias Theodor (Ed.). *Kulturräume in Sachsen–Eine Dokumentation zur Genese des Sächsischen Kulturraumgesetzes und zum „Probejahr"* 1995. Leipziger Universitätsverlag. 1996. 133-183. As highlighted by Vogt, Matthias Theodor (1996). *Kinder schafft Neues! Eine Einführung in das Sächsische Kulturraumgesetz (SächsKRG)*. In: Vogt, Matthias Theodor (Ed.). *Kulturräume in Sachsen–Eine Dokumentation zur Genese des Sächsischen Kulturraumgesetzes und zum „Probejahr" 1995*. Leipziger Universitätsverlag. 1996. 21-32: *"Entscheidende Korrekturen am Entwurf des Gesetzes (vgl. Dokument 11. 15) erfolgten im Hinblick auf einen verfassungskonformen Gesetzestext auf Grundlage der Kritik im Rechtsgutachten von Fritz Ossenbühl, Bonn (vgl. Dokument 11. 16)"*.

79 Article 10 on the termination of the effects of the law *(Außerkrafttreten)* was amended by the Law of 13 December 2002 (Extension to 31 December 2007), the Law of 07 November 2007 (Extension to 31 December 2011), the Law of 20 June 2008 (which extensively amends numerous provisions, including Article 10. The term of cessation of effects disappears definitively in the wording of the new Article 11).

80 The most extensive reforms were carried out with the laws of 20 June 2008, 11 April 2018, and 20 December 2022.

81 Pursuant to Art. 1, the Free State of Saxon is defined *"Social state under the rule of law committed to culture"*. According to Art. 11, as already noted in the second paragraph of this paper, *"The state promotes cultural, artistic and scientific creation... Participation in culture in its diversity and in sport must be made possible for the entire people. To this end, publicly accessible museums, libraries, archives, memorials, theatres, sports facilities, musical and other cultural institutions as well as universities, colleges, schools and other educational institutions open to the general public are maintained"*.

82 According to Baumann, Jens (2015). *Sachsen in neuer Gestalt. Zur Verwaltungsgliederung Sachsens 1990 bis 2015*. Sächsische Heimatblätter, 61(4). 370-381, the term *„Landkreis"* or *„Kreis"* (county) has been used in Saxony since 1938 instead of the previously valid designation *„Amtshauptmannschaft"* based on Prussian model. The *„Kreishauptmannschaften"*, the intermediate authorities, became „government districts". The 29 counties as well as up to eight urban counties existed until 1952.: *"Seit 1938 wurde für die bis dahin gültige Bezeichnung „Amtshauptmannschaft" nach preußischem Vorbild der Begriff „Landkreis" oder „Kreis" verwendet. Aus den „Kreishauptmannschaften", den Mittelbehörden, wurden „Regierungsbezirke". Die 29 Landkreise sowie bis zu acht Stadtkreise bestanden bis 1952"*. With the constitutional law for the formation of federal Länder in the German Democratic Republic of July 22, 1990 the districts *(Bezirke)* have been abolished. The first counties reform Act came into effect only partially on August 1, 1994 *(Kreisreform 1994)*. Three amendments Acts to the counties reform was necessary in 1995–1998. At the end of 2006/beginning of 2007, a new counties reform started, which was to be linked to a comprehensive administrative reform – that came into effect on August 1, 2008.

mentioned) and three "urban" (the independent cities of Chemnitz, Leipzig and Dresden) cultural areas are established with the mandatory membership for the counties and the municipalities involved. The supplementary general cross-reference to the rules laid down for the special-purpose associations (only for rural cultural areas), ends the §1(Abs. 5). Instead, the §5(1) states that the tasks of urban cultural areas shall be performed by the municipal bodies (However the Cultural Advisory Board, involving "cultural experts", shall be appointed by the City Council, according to §5(2)). The §2(1) defines the care of culture *(Kulturpflege)* "mandatory task" *(Pflichtaufgabe)* of both municipalities and counties. The §2(2) defines the role of cultural areas as "support of institutions of municipal culture in their tasks of regional importance, in particular in their financing and coordination". According to the special-purpose associations rules, rural cultural areas may themselves be sponsors of facilities and measures. The cultural areas gives itself a statute (§2(3)), taking into account their "regional characteristics". The §3(2) states the general principle of co-financing of municipalities and counties ("appropriate participation in the expenditure" or "financially effective expenditure"). The §3(3) defines the four criteria that let "cultural institutions or measures" be considered "of regional importance".[83] The decision on financing of "regional importance" of a specific measure shall be discretionary, open and transparent, by the "Cultural Convention", balancing the project funding and institutional funding. According to §3(5), all cultural sectors shall be given appropriate consideration in the allocation of funds and the annually publication of supported measures and institutions shall be carried out. The §4 provides for the organs and the administration of Rural Cultural Areas. The organs of the rural cultural areas are the "Cultural Convention" (which shall perform all tasks of the cultural area),[84] the Chairman of the Cultural Convention (which performs the day-to-day administration and represents the cultural area), Cultural Secretariat (to support both the Chairman and Cultural Advisory Council in the management of the cultural area) and the Cultural Advisory Council (appointing cultural experts as members. This organ shall introduce non-binding proposals and advice)[85]. The Cultural Convention shall involve the counties' administrators and representatives and the municipalities' mayors. According to §8, the legal supervisory authority is the State Ministry of Science and the Arts. The §6 provides for the "Saxon Cultural Burden-Sharing" or "Saxon Cultural Load Balancing" *(Sächsischer Kulturlastenausgleich)*. Starting (at least) from the amount of EUR 94,700,000, the Saxony *Land* shall provide for an "annual equalization" of cultural burdens, according to the 2013 *Saxon Financial Equalisation* Act and to the annual state budget. The allocation of the state funds may not exceed 30 percent of the sum of expenditure or financial expenditure of all institutions and measures supported by the cultural area in the case of individual (urban) cultural areas, and it may not be higher than twice the cultural levy in the case of rural cultural areas. Rural cultural areas shall co-finance the promotion of culture, by levying a cultural tax in rural cultural areas.

Already a few years after the entry into force of the *SächsKRG*, a study by Micheel[86] found, on the one hand, the origins and rationale of its reform in the context of the more general phenomenon of "regionalization" of administrative tasks traditionally proper to the *general municipal all-encompassing jurisdiction (prinzipielle gemeindliche Allzuständigkeit)*, following the cessation of extraordinary post-unification federal financial support; on the other hand, it pointed out some effects already underway on local public cultural policies. On the one hand, it was observed that *"In politics and planning, against the backdrop of changing modern statehood, which is accompanied by increasingly limited financial scope for public authorities and more differentiated tasks, regionalisation is increasingly being discussed as a problem-solving strategy for state tasks."*[87]

83 The criteria are the "specific, historically based value" for the "tradition of the respective region"; the "special significance for residents and visitors of the respective region"; the "model character for company forms of organisation"; the "special artistic-aesthetic innovative power".

84 The Cultural Convention tasks include the adoption of the statutes of the cultural area, the determination of the annual financial requirements, financial planning, the preparation of the funding list, the determination of the annual amount of the cultural levy, the distribution of funds and the annual financial statements.

85 An usual administrative law tool for the "duty to give reason" is provided. The Cultural Convention shall not be bound by the proposals for decisions of the Cultural Advisory Board, but the discretionary decision that deviate from the proposal shall be notified to the Cultural Advisory Board, stating the reasons for the deviation. The §4 provides also for the subsidiary advice by working groups for individual cultural sectors, by the Saxon Cultural Senate and by the Cultural Foundation of the Free State of Saxony.

86 Micheel, Monika (2001). *The Regionalization of Cultural Policy.: The Saxon Cultural Space Act. Comparative*. 11.3, 86–102.

87 *In Politik und Planung werden vor dem Hintergrund des Wandels moderner Staatlichkeit, der mit zunehmend enger werdenden finanziellen*

and that *"The increasing importance of the regional level also applies to specialist policies such as cultural policy."*[88] On the other hand, the specific regionalisation of cultural funding reinforced the aim of protecting Saxon cultural identity (*rectius*, of cultural identities in Saxony): *"Rural culture – declared as an integrative and identity-forming factor"*.[89] Furthermore, this regionalization introduced mandatory legal-administrative law tools of institutional cooperation, radically changing the legal framework of regional cultural funding: *"Regional financing refers to cooperation across existing political and administrative boundaries (e.g. as an association of local authorities) or to the cooperation or merger of individual, usually cost-intensive institutions such as theatres, orchestras or museums"*.[90] The mechanism of reinforcement of differentiated cultural identities (and in particular, the Sorbian linguistic minority) is identified in the differentiation between urban cultural areas (aimed at the task of financing traditional and larger cultural institutions, such as theaters) and rural cultural areas (aimed at financing "minor" and "remote" cultural identities and infrastructures, traditionally excluded from cultural funding). Naturally, it is observed, this redistributive purpose between urban culture and rural culture is "set aside" if mechanisms of "concentration" of resources in favor of urban cultural areas and major cultural institutions are widely used.[91] In its conclusions, this analysis underlined, in a critical sense, that the need to finance large cultural institutions to ensure their ‚operational continuity' was materialising, a few years after the entry into force of the *SächsKRG*, in the practice of classifying cultural initiatives and infrastructures in cultural sectors other than theatres and orchestras as of exclusively local relevance (and competence).[92]

Fifteen years later, Winterfeld[93] proposed a different and more overall perspective of the analysis. First of all, he highlighted that originally the ten-year time limit had been envisaged, not only to overcome the perplexities related to its legal compatibility with the "municipal cultural sovereignty" *kommunale Kulturhoheit* (it was a completely new and unprecedented model of public financing of culture in the German legal system), but rather with the aim of giving the municipalities the necessary time, to restructure their cultural infrastructures, when the flow of extraordinary federal funding provided for following unification had diminished. However, the economic capacity of the municipalities and counties, after a decade, still proved insufficient to financially support cultural infrastructure. For this reason, extension laws of 2002 and 2007 were approved, until the definitive elimination of the term of cessation of effects with the law of 20 June 2008. In addition, the decade of operational effectiveness of the *SächsKRG* had changed the characteristics of the "Saxon cultural landscape". Whereas previously local contexts were in the foreground, now the regional references of cultural institutions had been

Spielräumen der öffentlichen Hand bei gleichzeitig ausdifferenzierteren Aufgaben einhergeht, Regionalisierungen als Problemlösungsstrategien für staatliche Aufgaben vermehrt diskutiert.

88 *Die zunehmende Bedeutung der regionalen Ebene gilt auch für Fachpolitiken wie die Kulturpolitik.*

89 Micheel, Monika (2001), 98: *Kultur des ländlichen Raums zu einem integrativen und identitätsstiftenden Faktor erklärt "Whereas culture was traditionally associated with the city and understood as an expression of exclusively urban ways of life, the rediscovery and emphasis on individual strengths and regional cultural characteristics is leading to a new understanding of regional culture. Regional culture has long since ceased to be regarded exclusively as the culture of rural areas, which – referred to as "home or village culture" or "culture in the countryside" – has always had a provincial and backward-looking image. The continuation and revival of old traditions, as well as the development of new forms of cultural offerings, have gained considerable importance in the self-image and self-presentation of regions. | Wurde Kultur traditionell mit Stadt in Verbindung gebracht und als Ausdruck ausschließlich urbaner Daseinsformen verstanden, führt die Wiederentdeckung und Betonung eigener Stärken und regionalkultureller Besonderheiten zu einem neuen Verständnis von Regionalkultur. Längst gilt die regionale Kultur nicht mehr ausschließlich als die Kultur des ländlichen Raums, der – als „Heimat- oder Dorfkultur" bzw. „Kultur auf den Lande" bezeichnet – immer der Geruch des Provinziellen und Rückwärtsgewandten anhaftete. Die Fortführung und Wiederbelebung alter Traditionen wie auch die Entwicklung neuer Angebotsformen im kulturellen Sektor haben eine nicht unerhebliche Bedeutung im Selbstverständnis und in der Selbstdarstellung der Regionen gewonnen".*

90 *Die regionale Finanzierung bezieht sich auf die Zusammenarbeit über bestehende politisch-administrative Grenzen hinweg (z.B. als Zusammenschluß von Gebietskörperschaften) oder auf die Kooperation bzw. Fusion einzelner, meist kostenintensiver Einrichtungen wie Theater, Orchester oder Museen.*

91 Micheel, Monika (2001), 100: *"Letztendlich führt das Kriterium der regionalen Bedeutung zu einer Konzentration der Fördermaßnahmen auf die größeren und kostenintensiveren Einrichtungen und Projekte. Diese beanspruchen weit über 50 Pro zent der Etats der jeweiligen Kulturräume… So fallen ganze Sparten aus der Förderung heraus, die in ihrer Gesamtheit durchaus Bedeutung für eine Region haben".*

92 Micheel, Monika (2001), 102: *"Das Ziel des Erhalts der Vielfalt und der Eigenständigkeit von Kultur in den Regionen verschiebt sich zugunsten der Überlebensfähigkeit von Hochkultureinrichtungen, insbes. der Theater und Orchester. Eine Landes förderung ausschließlich für Theater und Orchester - während die übrigen Kulturbereiche den Kommunen überlassen bleiben - würde zum Wegbrechen großer Teile der regionalen Kultur führen".*

93 Winterfeld, Klaus (2016). *Erst für den Übergang konzipiert und nun auf Dauer in Kraft: Das sächsische Kulturraumgesetz.* Jahrbuch für Kulturpolitik 2015 16, 263–271.

strengthened. After a decade, *seven fundamental elements (kernelelements)* of the model of cultural governance established by the *SächsKRG* could be identified: 1) the first element was the establishment of *compulsory Kultur-Zweckverbänden (cultural special-purpose associations of municipalities),* with the aim of *"Jointly financing cultural offerings in solidarity"*.[94] All municipalities and counties become *compulsory members* of the *Kultur-Zweckverbände*.[95] Cultural solidarity takes the form of a "special associative goal" and justifies the compulsory nature of membership for rural areas. However, the principle of solidarity does not prevent the institutional differentiation of urban areas; 2) the financial backbone of the model is undoubtedly the financial equalisation granted by the *Land* of Saxony together with the community of municipalities, which amounts to an annual contribution of 91.7 million euros for the cultural sector. Of this sum, a smaller half goes to rural cultural areas and a larger half to the three major cities. The financial backbone of the model is undoubtedly the financial equalization ensured by the of Saxony, the annual contribution of 91.7 million euros for cultural areas. Of the total sum, about half goes to rural cultural areas and the other half to the three large cities; 3) of considerable importance is the collection of a self-determined cultural tax by the counties as an additional financial endowment to that of the *Land*, which has been able to mobilize annual resources of about 25 million euros. The prerequisite for access to state subsidies has been identified in the co-financing of at least one third of the funds of the cultural areas by the associated counties; 4) similarly, another pillar of the cultural space model is the appropriate financial participation of municipalities through the so-called "Municipality share" *(Sitzgemeindeanteil)*. The co-financing quotas of the municipalities and mounties prevent the so-called "demunicipalization" of cultural institutions, i.e., the de-responsibility of local institutions for the financing of culture; 5) another very important element was the articulated and balanced institutional organization of competences implemented by the SächsKRG. The success of the model is also due to the fact that the powers of "governance" are articulated in powers of direction, administration and control, and are attributed to different bodies, some with a political connotation, others with a bureaucratic connotation, others with a technical connotation. These include Cultural Conventions, Cultural Advisory Councils, working groups specialized in the sector and the Secretariats of cultural spaces. Thus, the political power of direction can operate harmoniously with the expertise of the committees of experts and with the solid bureaucratic-administrative management of the Secretariats of the cultural area; 6) as a further *kernelement*, it is highlighted that a "structural development mandate" under the competence of the *Land* has been consolidated. For a long time, it was certainly debated which cultural projects could be classified as regionally significant and thus worthy of funding. Now, a funding practice has emerged according to which more or less all projects and institutions with a supra-local target designation are classified as regionally relevant; 7) furthermore, it is noted that, due to the institutional balance achieved in the *SächsKRG*, the consolidation of a "structural development mandate" has made municipal cultural policies subsidiary but not "optional" (they remain a mandatory task of the municipalities). Finally, the *SächsKRG* was able to guarantee the autonomy of cultural areas with regard to the financing of projects. However, Winterfeld[96] points out that one of the downsides of the cultural space model would be the weakening of many cultural initiatives that are exclusively of local importance. As we have seen, only cultural projects that are considered to be of regional importance can be funded under the *SächsKRG*. Smaller projects in rural cultural areas have difficulty exceeding this threshold. Thus, according to this thesis, the prospect of purely municipal funding would have diminished after the entry into force of the *SächsKRG*, since the limited funds of the municipalities would flow just into the municipal shares of the cultural areas and little would remain for the financing of exclusively local cultural initiatives.

Zimmermann also points out that the *SächsKRG* was an unicum in the history of German cultural legislation of mixed financing structured between *Land*, counties and municipalities.[97] It is highlighted

94 *Kulturangebote solidarisch gemeinsam zu finanzieren*

95 *Pflichtmitglieder* of the *Kultur-Zweckverbänden*

96 Winterfeld, Klaus (2016). 270

97 Zimmermann, Olaf (2016). *Zwei Wege, ein Ziel: Das Sächsische Kulturraumgesetz und das Kulturfördergesetz NRW*. Jahrbuch für Kulturpolitik 2015 16. 273: *"Es war daher wegweisend und bislang in der Geschichte der Bundesrepublik Deutschland einmalig, dass ein Gesetz mit dem Ziel auf den Weg gebracht wurde, durch eine strukturierte Mischfinanzierung von Land und Kommunen die Kulturfinanzierung zu sichern. Dabei ging es vor allem auch darum, auch jene Kommunen und Kreise an die Finanzierung der kulturellen Infrastruktur heranzuziehen, deren Einwohner sie zwar nutzen, aber traditionell zur Finanzierung nicht beitragen".*

that in 2015 the Saxon Ministry of Science and Art presented the first evaluation report on the effects and mechanisms of the Act. Overall, this evaluation revealed that the *SächsKRG* was functioning and only a few adjustments were necessary. First of all, an overall under-financing emerged, already after ten years, which risked compromising the fairness and impartiality of any mechanism for distributing resources: *"This means that even the most sophisticated financial compensation system cannot compensate for general underfunding. Instead, if budgets remain capped, it will merely distribute the shortfall and responsibility for it more evenly."*[98] In the most interesting part of the analysis, the Saxon Cultural Areas Act was compared with the *Kulturfördergesetzes* NRW, the Cultural Funding Act of the Land North Rhine-Westphalia.[99] The main goal of the Cultural Funding Act NRW was to create the legal framework enabling municipalities in budgetary stabilization to provide culture funding. The NRW Cultural Promotion Act did not provide for an intermunicipal compensation mechanism or any additional state funding. The NRW Cultural Promotion Act provided for more transparent and understandable funding allocations, involving the municipalities, the counties/associations of municipalities. The local government public bodies are involved in various steps of the funding development and also played an important role in the evaluation. Inter-municipal cooperation, horizontal cooperation among cultural infrastructures and public-private partnerships was promoted in several paragraphs. The comparative analysis shows that even in the Länder there are now measures to supplement or compensate for municipality/county funding with state funding in the cultural sector, which are carried out through differentiated legal tools: *"All countries have compensation measures for municipal financing that have developed over decades and include cultural financing. And it is by no means the case that other countries do not contribute to the financing of municipal cultural expenditure. It is simply that the methods vary."*.[100] Both the Saxon Cultural Areas Act and the NRW Cultural Promotion Act have developed and adapted mechanisms to involve local cultural policy actors, structuring cultural funding to incorporate the cultural policy expertise. However, in contrast to the NRW Cultural Promotion Act, the main issue of the Saxon Cultural Areas Act would not be to declare the promotion of specific substantive cultural goals and fields, but to build the institutional-organizational framework, the cultural areas and the governance model: *"It seems important to me that, in contrast to the North Rhine-Westphalia Culture Promotion Act, which created a structure for making decisions on the content of funding, the starting point for the Saxony Cultural Space Act is not the content but the structures. This means that the Saxon Cultural Space Act is rather neutral with regard to the content of funding... In contrast, the North Rhine-Westphalia Cultural Promotion Act primarily creates a mechanism for making decisions on cultural funding based on content, some of which are already prejudged in the Act, such as the prominent position of cultural education."*[101] As can be seen, this thesis on the "content neutrality" with respect to the aims and cultural sectors of the *SächsKRG* leaves many doubts. On the one hand, one can recall the observations of Micheel on the purpose of protecting the "cultural pluralism" and the "cultural identities and expressions" of the smallest and most remote communities (i.e., in accordance with §2(3), that states the shaping of statutes for cultural areas considering their "regional characteristics"). On the other hand, it may be recalled the express mention of certain specific cultural purposes, such as cultural education, in accordance with §3(1), or the protection of the Sorbian language and culture, in accordance with §4(4).

To evaluate impact in of the Saxon Cultural Areas Act since its entry into force and, in particular, in the last decade, it is first necessary to remember in the periodic evaluation mechanisms provided by

98 *"Das heißt, ein noch so ausgeklügeltes System des finanziellen Ausgleichs kann eine generelle Unterfinanzierung nicht ausgleichen, sondern wird bei dauerhafter Plafonierung der Etats nur den Mangel und die Verantwortung dafür besser verteilen können"*. Zimmermann, Olaf (2016). 274.

99 *Gesetz zur Förderung und Entwicklung der Kultur, der Kunst und der kulturellen Bildung in Nordrhein-Westfalen*, entered into force 24 December 2014. From 1 January 2022, the Cultural Code of North Rhine-Westphalia, *Kulturgesetzbuch Nordrhein-Westfalen, KulturGB NW* entered into force.

100 *In allen Ländern bestehen über Jahrzehnte gewachsene Ausgleichsmaßnahmen in der Kommunalfinanzierung, die die Kulturfinanzierung einschließen. Und es ist mitnichten so, als würde sich in anderen Ländern das Land nicht an der Finanzierung kommunaler Kulturausgaben beteiligen. Allein die Wege sind unterschiedlich.*

101 Zimmermann, Olaf (2016). 275. *"Wichtig erscheint mir, dass im Gegensatz zum Kulturfördergesetz NRW, bei dem eine Struktur geschaffen wurde, um inhaltliche Förderentscheidungen zu treffen, der Ausgangspunkt beim Sächsischen Kulturraumgesetz nicht die Inhalte, sondern die Strukturen sind. Das heißt, das Sächsische Kulturraumgesetz ist gegenüber den Förderinhalten eher neutral… Demgegenüber schafft das Kulturfördergesetz NRW in erster Linie den Mechanismus, um inhaltliche Kulturförderentscheidungen zu treffen, die teilweise im Gesetz bereits präjudiziert sind, wie beispielsweise die herausgehobene Position der Kulturellen Bildung."*

§9 of the Act, after the last amendments. According to §9, every seven years the Land Government shall examine whether the law has proved effective in terms of both the conservation and promotion of cultural institutions and measures of regional importance. The adequacy of the organizational structures and financial mechanisms provided, the number and geographical arrangement of cultural areas, the procedures and criteria for the financing of cultural areas shall examined. This first seven-year report shall be sent to the Saxon Parliament by 31 December 2025. §10 provides for a mid-term subsidiary evaluation mechanism, the *Saxon Cultural Senate Report*. According to § 10, every four years (by 31 December), the *Saxon Cultural Senate* (the collective advisory body of the Saxon Parliament on cultural policy) must draw up *a report on the implementation* of the Saxon Cultural Areas Act, which contains in particular recommendations for strengthening the cooperation between the Land, the cultural areas, the municipalities and the counties. According to §11, the first report of the Saxon Cultural Senate has been submitted for the first time in December 2021.[102] In the 2021 first report, the Saxon Cultural Senate begins by highlighting that in the 1992 State Constitution the promotion of art and culture is defined as a Land goal and that with the 1994 *SächsKRG*, the preservation of culture was defined as a mandatory task for the Saxon municipalities and counties. The distinction between compulsory cultural tasks and other voluntary tasks for the municipalities has made a decisive contribution to the preservation of the Saxon cultural landscape. The structures created by the cultural space model have been supported by state funds for up to two-thirds of their expenditure. In contrast to other cultural policy funding instruments, not only were individual projects supported, but cultural infrastructure in all regions of Saxony was promoted and sustainably secured. Thanks to the funding mechanisms, all areas are granted the same right to a cultural infrastructure (in particular, the rural areas). Overall, Saxony has acquired a more stable and substantial cultural funding in comparison with the other Länder. A key challenge in the evaluation of the *SächsKRG* is the different structure of urban and rural cultural areas. The Land direct financing of many state theatres *(Sächsische Staatskapelle, Saxon State Opera [popularly known as the Semperoper], Staatsschauspiel)* in urban cultural areas and larger cities creates a structural advantage for urban cultural areas. The report stresses that a relevant issue is therefore the balanced funding for rural cultural areas compared to urban areas, in which are present the larger cultural institutions (such as theatres, orchestras, museums, libraries or socio-cultural centers). These cultural infrastructures, together with the schools of art, dance and music, shall ensure the "cultural continuity". The virtuous interaction between the political decision-making power (Cultural Convention or city council), the expertise (cultural advisory councils and specialized working groups) and the bureaucratic administration (cultural secretariats) is the core of the implementation of the *SächsKRG*. In terms of structural implementation, the report notes the rural cultural areas differ greatly from three urban cultural areas, in which the decision-making powers have been allocated to the municipal councils. Furthermore, very different procedures have developed in the individual cultural areas for the composition of expert committees and their involvement in the funding procedure. With the transition from the municipal funding to cultural areas funding, the report underlines the decrease of autonomous direct funding initiatives by municipal cultural administrations. In a critical sense, the report notes that even activities that should remain in the hands of municipalities (such as city festivals, anniversaries and parades) are transferred to institutions funded by cultural areas, even though these activities should not receive funding from cultural areas.

On the occasion of the 30th anniversary of the entry into force of the *SächsKRG*, a "joint position" of the cultural areas was formulated on 03-07-24, which was also approved by the Cultural Senate on 01-08-24. The representatives of rural and urban cultural areas expressed to the Saxon Government and Parliament the common concern that it was urgently necessary, on the one hand, to increase and, on the other hand, to make the available financial resources more "dynamic". The available resources are defined as insufficient considering the increase in costs, especially staff and energy expenses. A "periodic indexing" of funds for cultural areas is suggested through financial planning tools, binding for cultural areas, in order to absorb annual cost increases in all cultural sectors. Furthermore, the overlap of the so-called "Cultural Pact" (a mechanism for additional direct funding for ten theatres and orchestras by the SMWK, the Saxon Ministry of Culture) with the ordinary financing of cultural areas is criticized.

102 *First Report of the Saxon Cultural Senate on the Enforcement of the Saxon Cultural Space Act, 2021*

The cultural areas are asking for the integration and harmonization of these two funding paths within the *SächsKRG*, invoking the principle of "municipal cultural sovereignty" *kommunale Kulturhoheit* (analyzed within the first paragraph of this paper), to enable a balanced distribution of funds.

As can be seen, all these studies highlight, with different nuances, in a tendentially negative sense, the organizational and governance differentiation between rural cultural areas and the three urban cultural areas. They stress that the institutional balance among Gemeinden, *Landkreise* and *Kultur-Zweckverbänden*, adequately implemented in rural cultural areas, is lacking in urban cultural areas, where the municipal bodies take on the role of directing and administration of cultural funding, favoring the concentration of resources in favor of the continuity of major cultural institutions (theaters and orchestras). The analysis should be shifted from a legal point of view. On the basis of all that has been analysed in the first paragraph of this paper (the "demythologizing" of the *kommunale Kulturhoheit* and its "tracing back" to the *Kulturföderalismus*, ambiguous definition always poised between *cooperative* and *competitive federalism*), it can be noted that, in the legal model of the *SächsKRG*, "Cultural solidarity" takes the form of "special associative purpose" and justifies the compulsory nature of membership for rural areas. However, the principle of solidarity does not prevent the institutional differentiation of urban areas. On the contrary, when the city becomes medium-large, the principle of solidarity fails to scratch the wall of the "guarantee of self-administration" *(Selbstverwaltungsgarantie)* and of the "general municipal all-encompassing jurisdiction" *(prinzipielle gemeindliche Allzuständigkeit)*.

A few years after the entry into force of the *SächsKRG*, we can find, in the aforementioned analysis by Micheel, a specific criticism of the lack of transparency in the administrative procedures of public calls for tender and notices for funding, by the secretariats of cultural areas.[103] In fact, in the subsequent literature and in the 2021 *report* prepared by the Cultural Senate, these critical issues have not emerged. Furthermore, for all that it has been possible to search for the purposes of this paper, in the thirty years since its entry into force the *SächsKRG* has only rarely been present in case law of federal courts, the *Bundesverfassungsgericht* or the *Bundesverwaltungsgericht*, or in the Saxon state courts, the *Verfassungsgerichtshof des Freistaates Sachsen (SächsVerfGH)* and the *Sächsisches Oberverwaltungsgericht*.

The *SächsKRG* has been mentioned by the *Saxon Verfassungsgerichtshof* within the judgment of 26 June 2009 on the 2008 Saxon Counties Reorganization Act *(SächsKrGebNG)* and on 2008 Saxon Reorganization of Administration Act *(SächsVwNG)*. The judgment stated that the two mentioned law reforms were in accordance with the Saxon Constitution, above all on the basis of an in-depth analysis of Art. 85 of the Saxon Constitution. In determining the boundaries of counties, the legislature was guided by the criterion of not dividing, if possible, the territory of existing counties into multiple new counties, in order not to disrupt the historical relationships and structures that had arisen since the previous district reform. To underline the need to preserve cultural, historical, and religious ties and relationships, particular relevance was thus attributed to cultural areas according to the *SächsKRG*. Article 84, paragraph 1, of the Saxon Constitution *(SächsVerf)*, which guarantees municipalities the right to perform and independently fulfil all tasks within their local area of responsibility, and Article 85, paragraph 1, which contains detailed provisions regarding the relationship between state and municipal task performance, were mentioned. For the distribution of state tasks between state authorities and the actors of municipal self-administration, Article 85, paragraph 1, sentence 2 of *SächsVerf* is based on the principle of "tiered task performance", which aims for the most locally-based performance of state tasks possible. However, the Constitution does not contain any more detailed provisions for the allocation of Land tasks within the municipal level; in particular, it does not recognize a priority of municipal over county level. Such a priority cannot be deduced from the self-administration guarantee, as state tasks do not fall under its protection. Thus, the legislator is free, within the limits set by Article 85, paragraph 1, of *SächsVerf*, to assign land tasks to either the

103 Micheel, Monika (2001), 96: *"Seit 1995 haben sich die Förderstrukturen etabliert. Aufgrund der de facto abnehmenden Finanzmittel ist der Kreis der Geförderten rückläufig, so daß neue Anbieter zunehmend weniger Chancen zu haben scheinen, überhaupt in die Förderung zu gelangen, zumal sie häufig keine regionale Bedeutung nachweisen können. Auch läßt sich nicht von der Hand weisen, daß die Kultursekretäre, die meistens langjährige Angestellte eines der beteiligten Landkreise sind, Antragsteller aus dem eigenen Landkreis besser oder länger kennen. Die Informationen über Konvents- und Beiratssitzungen sind meist nur den bereits Beteiligten bekannt, da eine öffentliche Bekanntmachung nicht systematisch erfolgt."*

counties or the municipalities. The task distribution principle of Article 85, paragraph 1, sentence 2 of *SächsVerf* allows the legislator, to the extent that the requirements for transferring tasks to the actors of municipal self-administration are met, a scope for design within which it can also give effect to other constitutional concerns without requiring any further constitutional justification. The municipal self-administration bodies are fundamentally not threatened by interventions requiring justification in their self-administration guarantee as a result of the transfer of state tasks within the framework of Article 85, paragraph 1, sentence 3, and paragraph 2. In particular, the financial sovereignty granted to them is not impaired. The transfer of state responsibilities to the municipalities or the counties is dependent on the reliability and appropriateness of the task fulfillment by the local bodies of self-administration. The feature of reliability refers to the performance capability of the self-administrative body taking on the task, which can be assessed based on personnel availability, the specialized qualifications of the staff, and the technical and financial resources. Appropriateness pertains to the nature of the task to be completed and requires that it is suitable for decentralized execution. In addition, the feature of appropriateness points to the economic aspects of task relocation. Therefore, for appropriateness, it is sufficient if the municipal bodies of self-administration can ensure proper task fulfilment without disproportionate additional costs arising compared to execution by state authorities. Finally, Article 85 does not establish an institutional legal reservation, which would bind the transfer of tasks to a statutory law. The parliament can limit itself by statutory laws to the regulation of essential questions, while leaving the implementation of fundamental decisions and the allocation of individual tasks to the ordinances and other second level normative regulations.

The amendment §6 of *SächsKRG* by the Budget Accompanying Law 2011/2012 (*Haushaltsbegleitgesetz* 2011/2012) of December 15, 2010 has been analysed by the Saxon *Verfassungsgerichtshof* within the judgment of 14 August 2012.[104] The amendment reduced and reshaped the funds allocated annually to the Saxon cultural areas and renamed the cultural area *"Elbtal - Sächsische Schweiz – Osterzgebirge"* to *"Meißen - Sächsische Schweiz – Osterzgebirge"*. First of all, the *SächsVerfGH* recognized the "equalization purpose" at the origins of the *SächsKRG*: *"The unequal cost burden, on the one hand, for the municipalities that maintain larger cultural institutions, and, on the other hand, for the surrounding municipalities, whose citizens also use these institutions without their municipalities contributing financially, seemed to the Saxon State Parliament to be capable of jeopardizing the existence of such cultural institutions. The Saxon Cultural Areas Act (SächsKRG), initially limited to ten years, was established to counter this threat and to address the numerically unequal distribution of cultural offerings in urban and rural areas"*.[105] Furthermore, the *SächsVerfGH* highlighted the four key points *(Kernpunkte)* of the *SächsKRG*: 1) the statutory anchoring of cultural care as a mandatory task of both municipalities and counties: *"die gesetzliche Verankerung der Kulturpflege als Pflichtaufgabe"*; 2) the division of Saxony into five rural cultural areas (organized as special-purpose associations of municipalities and counties with an independent "association-like structure, with mandatory and non-mandatory members) and urban cultural areas" (the county-free cities of Chemnitz, Leipzig, and Dresden); 3) the *"sächsische Kulturlastenausgleich"*, "Saxon cultural burden compensation", the joint financing of regionally significant institutions and measures; 4) the *"Beteiligung der Fachöffentlichkeit"*, involvement of experts in the funding decisions of cultural areas through the cultural councils. The content of the amendment by HBG 2011/2012 to §6, paragraphs 1 and 2 of the *SaxonKRG* confirmed the burden compensation *(Kulturlastenausgleich)* of "at least 86.7 million euros" per year; the relationship between state and cultural areas financing was confirmed (state funds providing at most 30 percent of total expenses and not higher than double the cultural levy); the reservation "up to 2 percent" for structural measures was replaced with a reservation of "at least 1 million euros"; only "at least 82 million euros" of total funds was now be made available to the cultural areas; "at most 3.7 million euros" was now reserved to the State Theatres of Saxony, "for the performance of their duties". So, with the revision of Section 6 of the *SächsKRG*, a new distribution of the state cultural

104 SächsVerfGH, Judgment of 14 August 2012, Vf. 97-VIII-118.

105 *"Die ungleiche Kostenbelastung einerseits der Gemeinden, die größere Kultureinrichtungen unterhalten, und andererseits der Umlandgemeinden, deren Bürger die Einrichtungen eben falls nutzen, ohne dass ihre Gemeinden sie mitfinanzieren, erschien dem Sächsischen Landtag geeignet, den Bestand derartiger Kultureinrichtungen zu gefährden. Um dieser Gefahr zu be gegnen sowie der zahlenmäßig ungleichen Verteilung der kulturellen Angebote im städtischen und ländlichen Raum entgegenzusteuern, wurde das – zunächst auf zehn Jahre befristete – Sächsische Kulturraumgesetz (SächsKRG) geschaffen"*.

equalization burden is made among the cultural areas, the cultural institutions applying for funding, and the State Theaters of Saxony. The judgment was promoted by the city of Leipzig to challenge, above all, the new reservation of funds in favor of the State Theaters of Saxony, which, together with the new limit of state co-financing for structural and organizational measures (the reservation „up to 2 percent" replaced with a reservation of „at least 1 million euros"), significantly reduced the resources available for the municipal theaters and cultural institutions. The applicant claimed that the legislative reform was incompatible with Articles 82 and 85 of *SächsVerf*, the state duty to adequate financing of self-administration of local bodies for the "mandatory" task of cultural policies. Furthermore, the applicant claimed that the legislative reform was incompatible with the rule of law *(Rechtsstaatsprinzip)* and the principles of trust or of protection of legitimate expectations *(Vertrauensschutzprinzip, Verfassungsgrundsatz des Vertrauensschutzes)*. On the one hand, a disparity in treatment between state theatres and other cultural institutions is created; on the other hand, the multi-year planning of cultural activities suffers an unexpected prejudice due to the reform: the *"violation of their legitimate expectation in the continued existence of the previous legal situation"*.[106] The application was declared inadmissible by the Court. The Court underlines the two distinct financial guarantees for self-administration provided for by Article 85, paragraph 2, and Article 87[107] of *SächsVerf*, "to be kept strictly distinct".[108] Only the initial transfer of a task to local bodies of self-administration falls under the regulatory scope of Article 85 Paragraph 2. All further questions are to be assessed exclusively according to the standard of Article 87 of the Saxon Constitution[109]: *"The financial guarantee of Article 85 Paragraph 1 Sentence 3 and Paragraph 2 of the of SächsVerf does not require any „adjustment" of the existing regulations for subsequent years"*.[110] Article 85, paragraph 1, sentence 3 and paragraph 2 introduces an independent financial guarantee for the municipal bodies of self-administration, which fundamentally differs from the general municipal financial guarantee of Article 87. The reshaping of state financial equalization no longer falls within the regulatory scope of Article 85, but must only be assessed according to the provisions of Article 87. The Court, on the one hand, confirms that Article 87 allows for an assessment of a breach of the principle of protection of legitimate expectations; on the other hand, in rejecting the appeal, it concludes that *"the applicant has not claimed a violation of the constitutional standard considered solely in accordance with Art. 87 of the Saxon Constitution"*.[111]

Finally, the *SächsKRG* was mentioned by the *Sächsisches Oberverwaltungsgericht* in the judgment of 12 February 2013.[112] The judgment analyses the appropriate "participation of the municipality of origin" of the applicant cultural institution in the financing of the institution by the cultural area, provided for in §3(2) of *SächsKRG*, whereby the amount of this participation is determined by an annual resolution of the cultural convention. According to the Court, the grant decision does not set the municipality's share, but rather the grant depends on the municipality's share defined by the resolution of the cultural convention in connection with the eligible deficit in such a way that the amount of the granted grant is the remaining shortfall in the approved budget after deducting the municipality's share. The provision of the municipality's share is a *"prerequisite" for the granting of the grant by the respondent and is not a component of it*, so that a claim of the applicant arising from the grant decision with respect to the municipality's share only exists for its forwarding if it has been paid to the cultural area by the municipality in accordance

106 *"Verletzung ihres schutzwürdigen Vertrauens in den Fortbestand der bisherigen Rechtslage vor".*

107 The Article 87 of *SächsVerf* states that *"(1) The Free State shall ensure that the local bodies of self-government are able to fulfil their tasks; (2) The municipalities and counties shall have the right to levy their own taxes and other charges in accordance with the law. (3) The municipalities and rural counties shall participate in the latter's tax revenues, taking into account the tasks of the Free State within the framework of supra-municipal financial equalisation. (4) The details shall be determined by a law [(1)Der Freistaat sorgt dafür, dass die kommunalen Träger der Selbstverwaltung ihre Aufgaben erfüllen können; (2) Die Gemeinden und Landkreise haben das Recht, eigene Steuern und andere Abgaben nach Maßgabe der Gesetze zu erheben. (3) Die Gemeinden und Landkreise werden unter Berücksichtigung der Aufgaben des Freistaates im Rahmen übergemeindlichen Finanzausgleiches an dessen Steuereinnahmen beteiligt. (4) Das Nähere bestimmt ein Gesetz]".*

108 *"zwei strikt voneinander zu trennen de Finanzgarantien".*

109 *"Nur die erstmalige Übertragung einer Aufgabe auf diese Träger unterfällt dem Rege lungsbereich des Art. 85 Abs. 2 SächsVerf. Alle weitergehenden Fragen sind dage gen ausschließlich am Maßstab des Art. 87 SächsVerf zu beurteilen"*

110 *"Die Finanzgarantie des Art. 85 Abs. 1 Satz 3 und Abs. 2 SächsVerf fordert keine „Nachbesserung" der vorhande nen Regelungen für Folgejahre".*

111 *"Eine Verletzung des danach als verfassungsrechtlicher Maßstab allein in Betracht kom menden Art. 87 SächsVerf hat die Antragstellerin nicht geltend gemacht".*

112 *OVG Sachsen*, 12.02.2013, 1B7/13.

with §6(2.2) of the funding guidelines. However, if the municipality's share is not part of the grant from the cultural area and the municipality – as in the case analysed – has not paid the municipality's share in full to the cultural area, the applicant cannot demand the payment of any additional municipality's share from the cultural area that it has not actually received. The argument (proposed by the applicant within the judgment) that the system of *SächsKRG* fails if the applicant has no claim to the payment of the municipal share, was considered incorrect by the Court, because the funding by the cultural area requires, in accordance with §3(2) of *SächsKRG*, a (minimum) funding amounting to the municipal share, so that the institutional funding of the cultural area *follows* the funding by the municipality. The other way around that funding from the municipality may be enforced in a certain amount through cultural area funding is incorrect. The Court concludes by specifying that, therefore, the grant notice from the cultural area does not contain any obligation for the municipality to pay the municipal share to the cultural area; rather, this payment is the basis for the institutional funding approved in the grant notice; if this basis is eliminated, it is up to the cultural area to draw legal consequences from this.

As pointed out earlier, an in-depth legal study, elaborated on the draft law during the process of approval, in order to verify the impact of the Saxon Cultural Areas Act and any problems of compatibility with the *kommunale Kulturhoheit* and the *Selbstverwaltungsgarantie*, clearly summarized the most relevant legal issues concerning the cultural heritage law both in the German federal system and in Saxony law. According to Ossenbühl,[113] the structural crisis in the promotion of culture in Saxony caused by the cessation of extraordinary funding as a result of the Reunification Treaty allowed the legislator greater freedom of action with regard to the measures provided for by the SächsKRG, as measures were provided for a limited period of effectiveness, establishing a transitional regulatory regime of ten years. Thus, a reconciliation was achieved between two conflicting constitutional principles: on the one hand, the obligation to promote culture pursuant to Art. 11 of the Saxon Constitution, an expression of the *Kulturhoheit der Länder*; on the other hand, the protection of the *Kulturhoheit* and the *Selbstverwaltungsgarantie* of the municipalities and counties, pursuant to Art. 28(2) of the Saxon Constitution.

The provision for a system of State aid for culture through cultural areas, within the meaning of §2(3), could not therefore constitute a derogation from the principle of *Selbstverwaltungsgarantie* to be interpreted strictly, capable of eliminating the existence of the "third level of financing", i.e., the direct financing by municipalities and counties of cultural initiatives of exclusive interest. Pursuant to Art. 28(2) of the Saxon Constitution, municipalities and counties were to remain with the "availability" of administrative powers for the financing of culture. In fact, only the emergency situation of the Saxon cultural institutions (which were effectively threatened in their existence due to the lack of continuity in funding) could justify the temporary (ten-year) subsidiary administrative management of cultural funding by the cultural areas. Only in this way, defining it as a "temporary organizational-administrative model" was it financially admissible. In any case, the task of protecting culture assumed a strengthened importance, such as to justify the new extraordinary and temporary level of government, also in the light of Art. 35 of the Treaty of Reunification, expressly recalled the task of protecting culture. The cultural areas training model established a joint funding system with a larger revenue base and a simultaneous commitment to concerted expenditure management. Without this sharing of financial resources, the correct fulfilment of the task of financing culture by institutions of regional importance could not be guaranteed, so that the compulsory establishment of cultural areas was in any case required for urgent reasons of public interest. The internal structure of rural cultural areas as a special purpose association ensured that independent counties and cities could participate directly in decision-making through their own representatives. In this way, they received some compensation for the loss of autonomy. Article 85 of the Saxony Constitution was to be interpreted as meaning a uniform financial guarantee. This depended on a concrete configuration on the part of the legislature and did not contain any direct constitutional basis for the reimbursement of expenses. This also applied to the special obligations to promote culture under Art. 11, paragraph 2 of the Constitution of Saxony and Art. 35 of the Reunification Treaty. The financing provided for by the *Land* of Saxony thus represented acceptable regulation, which clearly moved within the limits of the legislature's discretion. The definition and geographical delimitation

113 Ossenbühl, Fritz (1996).

on the basis of criteria such as language, customs and traditions had their roots in the coexistence and the life of the population and thus represented a plausible decision-making grid for the geographical division of cultural areas, which served precisely the purpose of preserving cultural identity. From a constitutional point of view, it was possible to delegate the geographical delimitation to a subsequent act of regulation. However, the delimitation criteria had to be established by law, so as to ensure the minimum requirements of transparency of the regulatory framework. The formation of cultural areas as associations for specific purposes presupposed that it was a union of several local authorities in order to carry out common tasks. This condition was absent in the case of the so-called urban cultural areas, constituting a violation of the constitutional prerogatives of the municipal bodies of large cities. The cities of Chemnitz, Leipzig and Dresden were thus to be integrated into the concept of cultural areas only while maintaining their institutional physiognomy. As regards the procedures and criteria for the distribution of funds by cultural areas, it was observed that artistic freedom was not in question. The principle of equality and the prohibition of arbitrary discretionary administrative decisions referred to in Art. 3(1) (GG) also required that the distribution of funds be carried out according to objective criteria, problematic with respect to artistic evaluations. The problematic nature of administrative discretionary powers in the field of artistic evaluations required adequate organization and procedural rules to ensure a fair administrative procedure. The institutional integration of cultural experts was to be subject to a legal reservation as regards the appointment of its members and the methods of personnel selection. In addition, the composition of the bodies and the decision-making process (especially the decision-making quorums) had to be subject to legal reservation. The principle of due process required that the decision of the cultural convention disagreeing with the experts' assessment be linked to an enhanced obligation to state reasons for the decision (on the reasons for the dissenting opinion, the then experts advise). The levying of a cultural tax by the respective cultural area was analyzed as one of the classic competences of special-purpose associations. The definition and collection of the contribution required compliance with the general principle of equality. The group of local authorities subject to the levy consisted of the municipalities and counties that had the task of promoting cultural institutions of regional importance. In order to determine the distribution criterion, it had to be allowed, from a constitutional point of view, to orient itself to criteria purely related to needs.

Finally, it is right to conclude this brief analysis of the *SächsKRG* with the reflections of the illustrious scholar who is honored in this volume, Prof. Dr. Matthias Theodor Vogt.[114] The genesis of the *SächsKRG* really involved Saxon regional and local institutions, civil society, and the artistic community, distinguishing itself as an experiment in *deliberative democracy: "What made the genesis of the cultural space concept so special was the discussion process that took place throughout Saxony. Looking back, there is hardly a political leader, professional association or artist who cannot rightly claim to have contributed to the success of the project... The development of the Cultural Area Act and other provisions is pragmatic for the open and issue-oriented practice of democracy that could distinguish the new federal states from the administration-oriented association rule of the old federal states".*[115] It was highlighted that the *SächsKRG* was coherent with the historical development of Saxony and contradicted currently the parallel reforming process of local self-administration and the state development plan, which was based on a vertical hierarchy of central cities, medium-sized centers, lower centers, and so on. The state development plan was characterized by significant competitive funding flows among the cities (the *competitive federalism* returns again, as we can see). In contrast, the key concept of cultural areas was based on the "horizontal principle", which underlies the formation of counties (the different approach of *cooperative federalism*). The specificity of the *SächsKRG* also lay in the fact that the laws of financing the culture of the West German *Länder* could not be taken as a model, but it was necessary to outline a new model suitable for an eastern Land post Reunification Treaty: *"The idea that Germany remained undivided as a cultural nation is incorrect. Although the form of cultural institutions may have been*

114 Vogt, Matthias Theodor (1996), 22ff.

115 *Das Besondere an der Genese des Kulturraumkonzeptes war der sachsenweite Diskussionsprozeß. Blickt man zurück, so gibt es kaum einen politischen Verantwortungsträger, keinen Fachverband, kaum einen Künstler, der nicht mit Recht sagen darf, er oder sie habe das Seine zum Gelingen des Projektes beigetragen… Das Werden des Kulturraumgesetzes und anderer Vor haben ist pragmatisch für jene offene und sach-orientierte Praxis von Demokratie, die die neuen Bundesländer von der verwaltungsorientierten Verbändeherrschaft der alten Bundesländer unterscheiden könnte.*

similar, their function was, as shown, diametrically opposed. The language, customs and behaviour of citizens had been subject to different conditions for too long to be brought together overnight by a treaty and the introduction of a common currency. Last but not least, there is a gaping chasm between the two concepts of culture: according to surveys, Western citizens define culture primarily as Goethe, Kant and Beethoven, while for Eastern citizens, tableware and everything else that makes everyday life beautiful also belong to the concept of culture.".[116] When the draft law of the *SächsKRG* was discussed, the main premise of the Reunification Treaty – to achieve an economic alignment – showed itself to be an illusion. As Vogt highlighted, the Saxon municipalities *"was characterized by the irreconcilable contradiction between their own tax capacity and the claim to equalization of infrastructure and the social welfare of the population, enforced by the adoption of the legal and social system of the old Federal Republic"*. The *SächsKRG* therefore proposed not to be in antithesis, but in harmony with all the b*urden-sharing systems* in the cultural sector that had been implemented post-reunification and that were still showing their effects. The *SächsKRG* represented a supplement among a total of five levels of cultural financing: 1) the Federal Government support for institutions of nationwide significance; 2) the state government cultural funding beyond its resources in the cultural burden compensation; 3) the Cultural Areas financing and promotion of institutions and measures of regional significance; 4) the municipal and county financing for all facilities and measures at the local or county level; 5) the EU cultural funding. About the *"Kulturförderung als kommunale Pflichtaufgabe"*, Vogt highlights, on the one hand, Art. 5 of the GG and, on the other hand, Art. 11 and 85 of the Saxon Constitution. The reallocation of cultural funding from a "voluntary self-administration task" to a mandatory administration task was linked by the Saxon municipalities to Article 85, paragraph 2 of the Saxon Constitution, providing for a corresponding state financial compensation. According to Ossenbühl, Vogt highlights that Art. 85 of the Saxon Constitution should be interpreted as meaning that it is not self-executing and therefore cannot be understood as a directly applicable basis for constitutional claims by municipalities and counties. Thanks to this constitutional interpretation, the co-financing mechanism could be implemented: *"Just as a municipal wastewater association levies charges, the cultural area is entitled to levy a cultural charge as regional cultural burden equalisation to cover the shortfall between the subsidy from the legal entity on the one hand and the allocations from interregional cultural burden equalisation on the other, i.e. the funds provided by the Free State and the municipal financial equalisation scheme."*.[117] Vogt also highlighted the legal issue of whether to establish the rural cultural areas as "special-purpose associations" was in contrast with the principle of *Selbstverwaltung* of local authorities under Article 28 of the GG and Article 82 of the Saxon Constitution. In this regard, he underlined that the cultural areas, providing for the participation of local authority representatives, did not change the cultural areas into state government agencies. They continued to operate like *Selbstverwaltung*. Finally, Vogt underlined that the *SächsKRG* had to be correctly interpreted above all as an expression of Art. 5 of the GG: *"The cultural areas are nothing more than a flexible framework for the innovative development of culture in Saxony, linked to democratic decision-making and thus to the political decision-making process at the grassroots level. The law on cultural special-purpose associations is intended as an accompanying aid in the difficult transition from a state-controlled art scene directed from Berlin to a free play of forces in the sense of Article 5 of the Basic Law in the process of Saxony's economic recovery."*.[118] Even today, after thirty years, we can largely agree with this reflection.

5. Local government and cultural policies in Italy. Final remarks

As shown in the third paragraph, within the Italian system the protection of traditional cultural heritage provided for by the 2004 Code, when it is "closely intertwined" with use and enhancement, allows the

116 *Deutschland sei als Kulturnation ungeteilt geblieben, geht fehl. Mag die Form der Kultureinrichtungen auch ähnlich gewesen sein, ihre Funktion war, wie gezeigt, geradezu entgegengesetzt. Sprache, Sitten und Verhaltensweise der Bürger haben zu lange unterschiedlichen Verhältnissen gehorcht, um durch einen Vertrag und die Einführung einer gemeinsamen Währung über Nacht zusammenkommen zu können. Nicht zuletzt klafft der Kulturbegriff auseinander: definiert der West-Bürger Umfragen zufolge Kultur im wesentlichen als Goethe, Kant und Beethoven, so gehören für den Ost-Bürger auch das Tischgeschirr und was sonst noch den Alltag schön macht, zum Begriff der Kultur.*

117 *Ebenso wie ein Abwasserzweckverband Umlagen erhebt, ist der Kulturraum berechtigt, als regionalen Kulturlastenausgleich eine Kultur umlage zu erheben, mit der die Deckungslücke zwischen dem Zuschuß des Rechtsträgers einerseits und den Zuweisungen aus dem interregionalen Kulturlastenausgleich ande rerseits, also den Mitteln des Freistaates und des kommunalen Finanzausgleichs, ausgeglichen wird.*

118 *Die Kulturräume sind nicht mehr als ein flexibler Rahmen für eine innovative Entwicklung von Kultur in Sachsen, gebunden an demokratische Entscheidungsfindungeri und damit den politischen Wiliensbildungsprozeß an der Basis. Das Gesetz über die Kulturzweckverbände versteht sich als Begleithilfe beim schwierigen Übergang von einem zentralistisch aus Berlin dirigierten Staatskünstlertum zu einem freien Spiel der Kräfte im Sinne von Art. 5 des Grundgesetzes beim Prozeß der wirtschaftlichen Gesundung Sachsen.*

Ministry of Culture, often through its local departments, to limit regional powers of enhancement, to strengthen the centralization of functions, and to blur the need to establish forms of loyal collaboration (despite the principle of subsidiarity, provided for and required by Article 118 of the Constitution). The central administration implements widely both the protection of cultural heritage assets and the promotion of cultural policies, and manages the broader resources, shrinking the regional and local policies. Article 117 of the Italian Constitution, as interpreted by the Italian Constitutional Court, shrinks the statutory powers of Regions in the field of cultural policies, above all in areas where the boundaries between protection and enhancement are blurred.

After the Covid-19 pandemic, within the Next Gen EU framework, the Italian Recovery Plan strengthened the close relationship between local authorities and the Italian government in several areas, including cultural policy. Italian implementation of the UNESCO Chair and, recently, the FARO Convention on cultural heritage also strengthened the relationship between the national government and individual local authorities (municipalities).

In the general legal framework established by the 2004 Cultural Heritage and Landscape Code, subregional (and supra-municipal) district authorities or similar public bodies governed by Regions are not explicitly provided for in the Italian system of cultural policies. In this paragraph some models of governance by Regions, Districts and Municipalities present in the current Italian legal order or those proposed by scholars are analyzed.

First of all, some models of *cultural districts* are often analysed and proposed by Italian scholars and, in some cases, have been introduced by regions.

In recent years, scholars[119] have proposed models of *cultural districts*, many of which refer to some well-known experiences gained in the Anglo-Saxon context since the 70s. For example, the activity of the *Greater London Council* (GLC – London municipal body) developed a strategy aimed at integrating the activities of the cultural sector (live entertainment, production of contemporary art, photography, cinema, publishing, design, etc.) with the activities of related sectors, such as tourism, through a territorial specialization. This specialization is understood as the concentration in delimited urban areas of museums, theaters, art galleries and other structures. The general model of cultural district considers the cultural sector in a broad sense, which includes cultural heritage, live entertainment, contemporary art production, photography, cinema, the television and publishing industry, the multimedia industry, fashion, design, and typical local products. These resources, or cultural endowments, can, in the GLC's opinion, be enhanced in the form of a district, in a specific area, individually or in combination with each other. The creation of a cultural district should aim at two types of objectives: on the one hand to make the process of cultural production more efficient and effective, on the other hand to optimize its economic and social impacts on the territory of reference. The elements that determine the competitive strength of a cultural district are in fact not dissimilar to those outlined for the industrial sector. The integrated system of relationships at the base of the district can be broken down into five sub-systems: the sub-system of territorial resources (historical, cultural and environmental resources); the sub-system of human and social resources (‚human capital', ‚social capital', level of education, presence of identity values, relationship of trust between communities, institutions and administrations); the sub-system of accessibility services (transport); the sub-system of reception services (accommodation and leisure and sports facilities); the sub-system of companies belonging to different sectors (crafts, communication, restoration, etc.).

Four models of districts are identified in the economic literature: (a) the industrial cultural district (e.g., the Hollywood film industry). The salient characteristics of this type of district therefore largely converge, even if they do not fully coincide with those of the theory of industrial districts; (b) the institutional cultural district (e.g., the Langhe in Piedmont or Chianti in Tuscany). This district is characterized by a strong rootedness in institutions that assign property rights and trademarks to a limited production area, promote fairs and festivals, linked to the cultural tradition; the recovery of the historical heritage of castles and farmhouses; the use of the landscape as an economic resource; the spread of

119 On cultural districts in Italian economic literature, see Alberti, Fernando, and Giusti, Jessica (2009). *Alla ricerca dei distretti culturali: un'analisi critica della letteratura.* LIUC papers n. 229, series Management ed economia della cultura. 1; Santagata, Walter (2009). *Economia creativa e distretti culturali.* Economia della cultura. 2; Valentino Pietro (2003). *Le trame del territorio. Politiche di sviluppo dei sistemi territoriali e distretti culturali.* Sperling & Kupfer.

eco-museums, cultural centers and wine bars; the creation of cultural parks and tourist routes cultural traditions linked to the literary and artistic tradition; the development of the tourism-hotel industry; the establishment of higher education centers in the field, for example, food and wine); (c) the museum cultural district, which is usually located in historic city centers and is the result of an accurate local public policy with the specific aim of increasing the demand for visitors and therefore the economic activities connected to it (hotels and accommodation facilities in general, craft activities, commercial activities, etc.). (d) the metropolitan cultural district (defined as a spatial agglomeration of buildings dedicated to the figurative arts, museums and organizations that produce culture and goods based on culture, services and related structures). It is based on two preliminary institutional requirements: the existence of an area in which there are buildings and land that can be used for cultural use and whose property rights structure is not too dispersed; the creation of an entity in charge of developing the project, facilitating planning procedures and supporting the management and marketing of cultural activities.

Scholars underline that it is possible to define cultural districts as: "reticular organizational forms densely populated by companies or organizations specialized in a specific cultural field or in closely related cultural areas, organized according to a supply chain logic, with a strong geographical and historical identity and supported by a dedicated institutional context". It follows that, in order to identify districts in the cultural field, strictly understood, the following conditions must be met: (a) delimited geographical location; (b) specialization in a specific cultural field; (c) presence of complementary organizations organized from a supply chain perspective; (d) spontaneity in the process of *districtization*; e) a web of relationships between spatially localized organizations.

Other scholars have analysed the regional laws establishing cultural districts,[120] underlining that, more than fifteen years after the first studies in Italy on cultural districts, the district models in the cultural field create an extremely diversified picture, as a consequence, first of all, of the absence of an unambiguous legal definition. In the Italian legal system, there is a lack of a definition of cultural district at the state level and a consequent regulation capable of activating the related mechanisms of identification, legitimation and institutionalization. The reference to cultural districts appears only in the Decree of the President of the Council of Ministers of 6 August 2008, "Approval of the national statistical program for the three-year period 2008–2010", which defined them as *"territorial systems characterized by a strong concentration of goods, productive activities, businesses and services, linked to the cultural sector in order to provide an adequate representation of the capacity and development potential linked to the cultural economy in terms of employment, of the provision of services, accessibility to areas, quality of the architectural, urban and landscape environment, richness of the social and cultural environment, entrepreneurial capacity, etc."* and in some regional laws. The experiences gathered in the field of cultural districts can be traced back to three main types: (a) regional initiatives (the most frequent); (b) initiatives promoted by the province; and (c) initiatives promoted by foundations of banking origin. To these types must be added cases that are often only the subject of study or in the start-up phase and not attributable to the first three groups (for example, the paths initiated by different subjects, such as universities and research institutes, which have promoted or taken part in European projects or feasibility studies related to the theme of the cultural districts; also included are private subjects, in particular consulting companies, which have conducted, often on commission from public administrations, feasibility studies for the creation of cultural districts).

For districts with regional initiative, it is possible to distinguish: (a) *Regions that have issued a law and/or one or more specific measures on cultural districts*; (b) *regions that have included the regulation of cultural districts in regional laws and/or in planning documents of a broader nature*; (c) *Regions that have promoted technological and productive districts including cultural heritage*. The heterogeneity of approaches is also reflected in the names and definitions used. Although the terms "cultural district" and "evolved cultural district" are the most common, there are cases in which the expression "cultural district" is accompanied by the attribute "tourist", or where "tourist district" replaces "cultural district". In the case of the experiences of districtization with a regional initiative that fall within the third path, the use of the names "technological district", "metadistrict" and "production district" is particularly frequent.

120 Cerquetti, Mara, and Ferrara, Concetta (2015). *Distretti culturali: percorsi evolutivi e azioni di policy a confronto/Cultural districts: comparing evolutionary paths and policies;* Hinna, Alessandro (2015). *Tipologie di distretti culturali a confronto: politiche, governo e gestione*. Both papers are in: Il capitale culturale. Studies on the Value of Cultural heritage. Supplement 03. 137-163.

Scholars in law have analysed and underlined above all the procedural aspects of the constitution of the districts in the models of regional laws.[121] The reflection in the legal field starts from the observation that the application of the district model to the specific cultural sector does not arise spontaneously, but is an expression of political will and cannot make use of automatisms and spontaneous entrepreneurial initiatives in the supply chain, as is the case for the many industrial districts. The economic literature underlines that the model of the "institutional industrial district" differs from the traditional district model precisely because it is not the result of a spontaneous process, but is induced by deliberate policy actions by formal legal institutions that, on the one hand, allocate intellectual property rights and area trademarks, and, on the other, provide assistance services (financial services, marketing, training, etc.) for production activities. The cultural district, understood as a territorial system of relationships intended to enhance cultural heritage, does not represent a specific form of industrial district, even if it inherits some fundamental and essential features, such as the link between products and territories, the quality of the goods and services produced, the exchange of knowledge and skills, even informal, and a strong public presence in support of production. It should be clear that the establishment of a cultural district requires: (a) the decision-making and financial support of political institutions, businesses, and the local community both in the planning phase and in the subsequent implementation and management phases; (b) that the territory has sufficient capacity for attraction, reception and transformation; (c) that there is sufficient demand to ensure the turnover necessary to make public and private capital investments profitable (so-called "market size").

On the basis of these premises, the procedural aspects of the construction of a cultural district are analyzed, based on regional laws. It begins with *a fact-finding survey* aimed at identifying potential districts in the reference area; this research is supported by the *promoting body, whether public, private or mixed* (regional administration, consortium of local authorities and enterprises, banking foundation, etc.). On the basis of the results of the fact-finding survey, the promoter publishes a *call* for selection in which criteria for the evaluation of project proposals are determined — consisting essentially of a pre-feasibility study (technical, financial and legal-administrative), the minimum contents of which are listed in the call — and local actors are invited to apply. Once the winning pre-feasibility studies have been approved, the promoting body invites the proponents to formalize the *working group* and validate the *monitoring plan* for drafting a *feasibility study*, drawn up by the same body and consisting of a sort of chrono-program. After the time allotted for the preparation of the feasibility studies, the *proposals submitted are evaluated* and the promoting body identifies the *studies to be financed*, deliberating the related appropriations.

To supervise the implementation of the actions included in the management plan, the promoting body will use four tools: (a) the *agreement*, which is nothing more than a contract stipulated by the entity itself with the leader of the partnership that promotes the cultural district; (b) the *constraint plan*, a document included in the agreement that identifies in the implementation of each action some critical moments to be overcome in order to obtain the disbursement of the contribution (so-called "milestones"); (c) the *monitoring system (in progress)*, which consists of detecting the progress of the interventions and activities within the district; d) the *evaluation system (ex post)*, which provides information about the effects of the project in terms of territorial development.

With regard to the legal instruments that can be concretely used to establish and manage a cultural district, the legal literature and regional laws seem to mainly propose the identification of the *participatory foundation* as the best organizational solution. From another point of view, it may be a problem that, in the presence of a power to protect cultural heritage attributed to a third party (a government body or an authority) and a largely public ownership of the property itself (State or local authorities), phenomena of *decision-making dualism* may occur, to the extent that, in the enhancement process, at least two subjects are called upon to make decisions: the protection manager and the administrative manager.
Other scholars[122] have underlined that one of the major problems in the management of cultural heritage is frequent and has long been analyzed and regulated in the sectors of the system in which local public services must be provided: the identification of *optimal operational areas*, which can guarantee good quality

121 Saitta, Fabio (2017). *I distretti culturali*. Il foro amministrativo. 9. 1947.

122 Biasutti, Giacomo (2021). *Il partenariato contrattuale pubblico-privato: una teoria del distretto culturale evoluto*. Le Regioni, 49(6). 1431–1470.

of the services provided, avoid waste, and ensure adequate interaction between institutional actors, both through *outsourcing* and through *in-house contracting*. In those sectors of public services where there are predetermined *optimal operational areas*, the quality of services without waste of financial resources is guaranteed at both planning and management levels. The optimal area in planning makes it possible to determine the minimum levels of services provided and their preventive financing. The optimal area in management makes it possible to configure a clear and predetermined institutional structure of multilevel competences (of public bodies) and partnerships (with private bodies), respecting the principles of subsidiarity "in vertical" and "in horizontal" sensea proclaimed by Article 118 of the Italian Constitution. The cultural district could constitute, for this doctrine, the optimal institutional model for the organization of local cultural policies, consistent with the need to operate in optimal operational areas. The identification of cultural areas would then be more consistent with the *reticular distribution of traditional Italian cultural heritage* - present in large, medium and small cities - and with the contextual presence of *intangible cultural heritage* assets (such as linguistic identities, traditional festivities, traditional gastronomy, etc.): according to this orientation, the district should be understood first and foremost as *a cultural measure of a specificity* that only makes sense of it exists as a concrete expression of the *common feeling* of a territory.

The most appropriate legal tool for the establishment and regulation of cultural districts is identified, in this case, in the *enhancement agreements* provided for in the Code of Cultural Heritage,[123] rather than in the solutions defined from time to time by regional laws and in the establishment of participatory foundations. The Cultural Heritage and Landscape Code, adopted by Leg. Decree No. 42 of 2004, provides in Art. 112, paragraph 4, that "the State, the Regions and the other local public bodies shall enter into agreements to define common strategies and objectives for enhancement, as well as to draw up the consequent strategic plans for cultural development and programmes, relating to cultural heritage of public relevance. The agreements can be concluded on a regional or subregional basis, in relation to defined territorial areas, and also promote the integration, in the agreed development process, of the infrastructures and related production sectors. The agreements themselves may also concern privately owned property, subject to the consent of the interested parties. The State shall conclude the agreements through the Ministry, which shall act directly or in agreement with any other State administrations which may be competent". These agreements are defined by the doctrine as *a species* of both *agreements between administrations* (with subsequent adhesion of private individuals) governed by Article 15 of the Law No. 241 of 1990, the Italian General Law on Administrative Procedure, and *programming agreements* governed by Article 34 of the Consolidated Law on Local Authorities, Legislative Decree No. 267 of 2000. A mixed legal discipline of public and private law applies to these agreements in the Italian legal system, as provided for by Art. 11 of the General Law on Administrative Procedure, Law No. 241 of 1990. These types of public law agreements (but supplemented by the provisions of the Civil Code) can be the most effective legal tool for coordinating the various competences of public bodies: planning acts with time schedules, commitments of financial resources, executive acts (publishing tenders, carrying out public procurement procedures, allocating funding, carry out ongoing and ex post checks), the procedures for overcoming disagreements between administrations, and rules for the protection and use of cultural heritage. However, the analysis of regional legislation seems to suggest that the Regions are following other paths, with the establishment by regional law of financial allocations available for projects to be financed (with mandatory minimum shares of financial participation by private proponents) following regional calls and public procurement procedures managed by the Regions. The public partnership agreement is placed in a subsequent phase, as an operational method of concrete management of the funding for the projects already successful in the call, which allows the subsequent adhesions of private partners other than the winning proponent of the call and defines the division of obligations and competences among the public bodies. In particular, the agreement downstream of the call allows the creation of new public bodies, deliberative assemblies and operational committees (composed of

123 On the enhancement agreements provided for in the Code of Cultural Heritage, see Gardini, Silia (2016). *La valorizzazione integrata dei beni culturali.* Rivista trimestrale di diritto pubblico, 2, 403.

representatives of public bodies and private entities involved) for the functions of supervision of the implementation of the planned cultural activities and services.

The model of Italian cultural districts, as emerges in Italian regional legislation and in scholars' studies, thus seems to differ from Saxon cultural areas in three aspects: (a) it is a more *conventional* than *institutional model*, based very much on agreements, pacts, contracts, conventions, partnerships, etc. It does not aim to create intermediary bodies for the government of culture that are stable, capillary and *spread throughout the regional territory* divided into *optimal territorial partitions*, with *compulsory local participation*, as in the Saxon law. Even where the creation of participatory foundations is envisaged, a stable and uniform institutional model is not defined; (b) there is a lack of *a stable* and *compulsory* state-local co-financing mechanism through an *equalization* mechanism, which could be useful especially with reference to non-urban areas and cultural activities traditionally lacking coherent, widespread and lasting planning and distribution of funding, as in the case of entertainment, local museums, local libraries and local cultural centers; (c) contrary to the Saxon law, the prerequisite for the establishment of districts is not the overall reorganization of regional/municipal competences in a perspective of stable and uniform district areas for the entire regional territory, but the presence in progress or the intention to achieve a perspective of economic development of the "supply chain", with the connection of cultural activities, tourist activities, craft activities, and supply chain activities instrumental to conservation (restoration, etc.).

The legal model of *mandatory* district authorities, as a result of *mandatory* agreements or *mandatory* associations of regional municipalities, is not present in Italian cultural heritage law. Furthermore, this legal model widely present in Italian legal order in specific fields, such as in *environmental law*.[124] Starting from the second half of the twentieth century, economic scholars in Italy began to highlight that an efficient organization and management of certain local public services required that these activities be carried out at a territorial level not necessarily corresponding to the municipal or provincial one, but *larger or smaller depending on the type of public service to organize*. The notion of *"optimal territorial area"* began to emerge and, with increasing insistence, was codified in statutory laws, as a *territorial area at the level of which to organize and provide* (according to the principle of *"unitary management"*) a public service efficiently. The notion of "optimal territorial area" was codified for the first time by Law No. 319 of 1976 on *water sanitation*, establishing that the Regions should have identified "optimal territorial areas" for the management of public services of "aqueduct, sewerage and purification". Afterwards, Law No. 36 of 1994 provided that Municipalities and Districts organized the *integrated water service* on the basis of *optimal territorial areas*, delimitated by the Regions, which should ensure the *unitary management of the service* and the overcoming of the "management fragmentation". Legislative Decree No. 22 of 1997 introduced the same legal framework for the *management of municipal waste*. Both the integrated water service and the integrated waste management were then the subject of a new legal framework in Legislative Decree No. 152 of 2006, which confirmed the organisation of these services at the level of the optimal territorial area and provided for the establishment of *Area Authorities*, autonomous bodies, with compulsory participation of local authorities. They were assigned the functions of organizing the service, transferring those originally placed in the hands of the local authorities. Legislative Decree No. 152 of 2006 definitively reformed the legal framework, moving from models of cooperation and associated performance of functions between local authorities through conventions and agreements, to the establishment of new administrative authorities in the area, public bodies "third" with respect to the local authorities present in the territorial area. Subsequently, the organization of the service by optimal territorial areas and the model of the "Area Governing Bodies", created for the integrated water service and for the waste service, were extended to *all local public network services of economic importance* with some legislative reforms of 2011 and 2012, which entrusted the Regions with the task of defining the perimeter of the optimal and homogeneous territorial areas or basins and of establishing Territorial Governing Bodies of these optimal and homogeneous territorial areas or basins, in which local authorities ("located"

124 On the ATO (Optimal Territorial Areas) in Italian environmental law, see Barozzi Reggiani, Giovanni (2018). *Public utility services, regulation and optimal territorial areas: the evolution of a model. Law and Society*: 3, 2018, 397–415; Parisio, Vera (2021). *The Integrated Water Service in the Italian Legal System Between Solidarity and Competition: An Overview*. In: Water Law, Policy and Economics in Italy: Between National Autonomy and EU Law Constraints, 309–326; Passalacqua, Michela (2016). *The administrative regulation of the ATOs for the management of local public network services*. Federalismi.it, (1). 2–44.

in the reference territory) must *compulsorily* participate. These Area Governing Bodies are responsible for their own planning functions (approval of area plans) and organization of the public service. As has been observed by scholars, (a) the organization of the public service simply in an "associated form" by local authorities is overcome; (b) the model of entrusting activities to an autonomous and distinct (from local municipalities and districts) legal public body arises; (c) local authorities must take part in it compulsorily. The public area government body organizes the public service through one of the three models compliant with the European Union regulatory framework (assignment to a private company after a tender and a public procurement procedure; establishment of a mixed public-private company; in-house provision).

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In conclusion of this paragraph, it is possible to summarize the main problems that have emerged in the Italian system in relation to the division of competences between the State, Regions and local institutions in the field of cultural heritage law.

The substantial, traditional prohibition on local authorities to intervene by regulating and carrying out protection functions independently has only been partially mitigated due to the interpretations of the Constitutional Court, which have developed the concept and the "spaces" of the so-called a*dditional protection*, which operates when the discipline of cultural heritage is intertwined with the discipline of *urban planning* (in relation to the so-called " government of the territory"), or when the Region assumes the care of *non-traditional assets*, which may present *"albeit residually, some 'cultural' interest for a given territorial community, thus providing a different and additional protection regime"*. As has been pointed out, it is often a "weak" protection, devoid of all the administrative law tools that are traditionally available. On the other hand, the main authoritative administrative measures are the exclusive competence of the central administration, since the local authorities concerned are only allowed to introduce the proposal. The protection of traditional cultural heritage provided for by the 2004 Code, when it is "closely intertwined" with use and enhancement, allows the Constitutional Court to limit regional powers of enhancement, strengthen the centralization of functions in the Ministry and mitigate the need to establish forms of loyal collaboration (despite the principle of subsidiarity, provided for and required by Article 118 of the Constitution). In particular, beyond the forms of cooperation — which must, however, be specifically provided for and implemented from time to time — the contribution of the Regions to the protection of fundamental assets, such as manuscripts and book collections not belonging to the State, is subject to the conclusion of specific agreements, a function that the 2004 Code has attributed to the competent archival and bibliographic superintendencies. The contribution of the Regions and other local authorities in cataloguing and supervision is also possible, subject to agreements and arrangements.

In addition, the Italian legal system of cultural heritage recognizes a very broad role for *atypical sources of law* in the integration of statutory legislation: ministerial regulations and decrees, D.P.C.M., but also acts of *soft law* and organization, such as guidelines, directives, memos and model schemes, issued by the Ministry in its function as the coordination center of sector administrations, which exert their influence and condition the regulatory and organizational powers of the Regions. Among the sources of regulation, we also find (and we should find to a greater extent) the *collaboration agreements* between the Ministry, the Region and the Municipalities, which, in addition to consensually regulating the tasks of each, can also innovate/derogate specific legal rules, when provided for by statutory law (for example, the discipline of landscape authorizations). This dual character, contractual and regulatory, of these agreements, on the basis of sporadic statutory rules, causes uncertainties in the system.

According to Barbati et al., Chirulli, Manfredi,[125] in the function of *enhancement*, which has merged with that of management, the *pluralism of the administration of culture* should be fully expressed and a real *multilevel governance* should be implemented. As we have seen, for this purpose Article 112 of the 2004

125 Barbati, Carla. Casini, Lorenzo. Cammelli, Marco. Piperata, Giuseppe. Sciullo, Girolamo (2017); Manfredi, Giuseppe (2017), 806. Chirulli, Paola (2019), 706.

Code provides for a compulsory contribution of the State, the Regions and other local public bodies in the fulfilment of the duty to enhance cultural heritage, in implementation of the general principle of loyal cooperation, affirmed in Article 7 of the Code. Private entities are co-owners of the enhancement function, where they coincide with the owners of the assets to be enhanced, i.e., economic operators who aspire to a partnership, and depending on whether they propose a predominantly cultural or economic enhancement of the assets. Based on the fourth paragraph of Article 112 of the Code, there should be a system of consultation divided into three phases: strategic programming, specific planning, management. In fact, this article states that *"The State, the regions and the other local public bodies shall enter into agreements to define common strategies and objectives of enhancement, as well as to draw up the consequent strategic plans for cultural development and programmes, relating to cultural heritage of public relevance. Agreements may be concluded on a regional or sub-regional basis, in relation to defined territorial areas, and shall also promote the integration, in the agreed development process, of the infrastructures and related production sectors. The agreements themselves may also concern privately owned property, subject to the consent of the interested parties. The State shall enter into the agreements through the Ministry, which shall operate directly or in agreement with any other competent State administrations"*. The following paragraph 9 of Article 112 provides that, in any case, even outside the hypotheses of paragraph 4, other agreements may also be stipulated, between the State, local public bodies and interested private individuals, *"to regulate common instrumental services intended for the use and enhancement of cultural heritage"*. It should also be remembered that further types of agreements between the State and the autonomies are also provided for in Article 118, for the promotion of study and research activities, and 119, for the dissemination of knowledge and use of cultural heritage in schools. Therefore, agreements between administrations, governed in a general way by Art. 15 of Law No. 241 of 1990 (the Italian Administrative Procedure Act), should become the ordinary and normal mode of administrative action in the field of enhancement of cultural heritage. Unfortunately, however, the "residual" rule provided for by paragraph 6 of Art. 112, according to which *"In the absence of the agreements referred to in paragraph 4, each public entity is required to guarantee the enhancement of the assets of which it has the availability"*, ends up being the *ordinary and main system of distribution of competences* in the field of enhancement, delimited by the jurisprudence of the Constitutional Court through different hypotheses of "centralization". The system of cooperation and consensus provided for by paragraph 4 of Art. 112 to date is largely not implemented, because it has *"encountered an administrative system that is not inclined and prepared to proceed in this way, so that in the performance of enhancement activities in many cases the dominical criterion still ends up prevailing"* (each public body enhances the cultural heritage assets of which it is the owner, according to the provisions of paragraph 6 of Art. 112), nor are there large transfers of assets from the national level to the Regions and local authorities, both because the Ministry has shown itself reluctant to cede ownership of the assets, and because in recent years the autonomies have only particularly scarce financial resources available.[126]

The reports by Association of the Compendium of Cultural Policies and Trends (2022) and by Ministry of Culture (2024)[127] let us to know how both regional and local (district or city) museums and other cultural institutions are financed and developed in Italian system.

126 Manfredi, Giuseppe (2017), 808.

127 Association of the Compendium of Cultural Policies and Trends (2022). *Compendium of Cultural Policies and Trends. Country Profile Italy*. 87ff.; Ministry of Culture. Direzione generale Educazione, ricerca e istituti culturali. Fondazione Scuola dei beni e delle attivita culturali (2024). *Minicifre della cultura*. Edizione 2024. Roma. 197ff.

	2020	2021	2022
1° Germania	24.487.000.000 €	25.049.000.000 €	26.311.000.000 €
2° Francia	19.617.000.000 €	21.550.000.000 €	22.521.000.000 €
3° Spagna	7.444.000.000 €	8.133.000.000 €	9.012.000.000 €
4° Italia	7.754.300.000 €	8.835.300.000 €	8.850.800.000 €
5° Paesi Bassi	5.290.000.000 €	5.568.000.000 €	6.082.000.000 €
Totale Paesi UE	94.869.100.000 €	100.778.800.000 €	106.443.400.000 €

Fonte: Eurostat

Fig.1: Public spending on culture: comparison between the top five EU countries (absolute values in euro, 2020–2022. Source: Eurostat, Ministry of Culture)

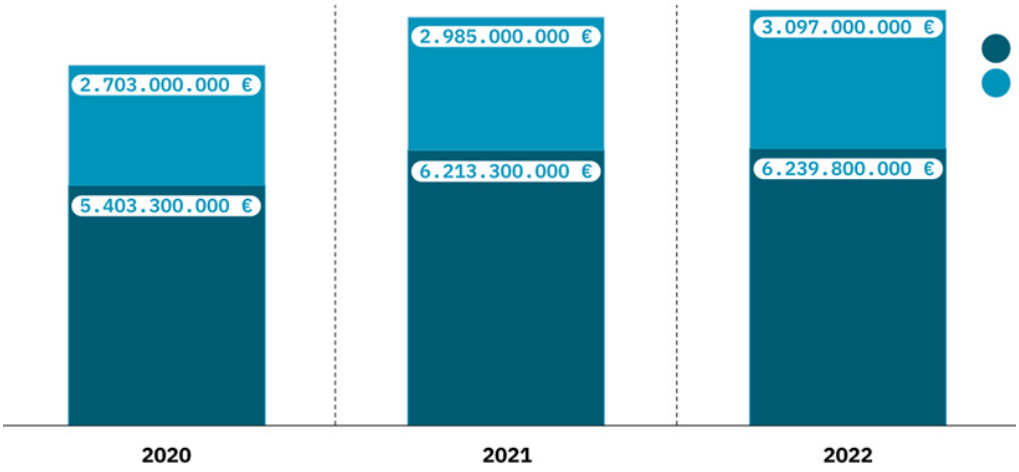

Fig.2: Public spending on culture. Central Government/Regional-Local Government, 2020–2022. Source: Eurostat, Ministry of Culture

Italian public spending on culture amounted to around €8.9 billion in 2022, of which just under two-thirds was allocated to cultural services1 and the remainder to radio, television and publishing services. This emerged from the data released by Eurostat3 – considering both the allocations of central government bodies, such as ministries, and the resources allocated by local governments, such as Regions and Municipalities. During the three-year period 2020–2022, there was an overall increase of 14%. In 2022, Italy was fourth in the European Union in terms of the volume of public spending on culture, preceded by Spain, France and Germany, while, if we analyze the percentage increase of this item compared to the pre-pandemic period and its percentage weight on total public spending, Italy occupied the last place in the ranking. In 2022, about two-thirds of public spending on culture was generated by the central government (67%). It is possible, however, to see a gradual increase in local authorities' spending on culture between 2020 and 2022 (+15%). In the national context, public funding for the cultural sector is mainly the responsibility of the Ministry of Culture, which, with an allocation of about 3.6 billion euros for the year 2023, ranks thirteenth out of fifteen ministries for the total amount of resources committed. In 2023, about 94% of the resources were allocated to the protection and enhancement of cultural and landscape assets and activities. Among the most financed important programmes, the "Enhancement of cultural heritage and coordination of the museum system" received 597 million euros, the "Protection of cultural heritage" received 583 million euros and the "Support, enhancement and protection of the live entertainment sector" received 565 million euros. In conclusion, it can be observed that the prominence of cultural heritage safeguarding is still the cornerstone of Italian cultural policy: "safeguarding" and "restoration" are the main State functions absorbing most of the financial resources allocated to the cultural field.

The Saxonian Cultural Areas Act is very interesting for the perspectives of an Italian implementation of district authorities through mandatory agreements among local authorities for cultural policies. The most relevant topics in the Saxonian Cultural Areas Act are: (1) the mandatory formation of cultural (local and urban) areas as district authorities created by agreement involving municipalities and districts; (2) the organisation, the bodies and governance of cultural areas; (3) the financing and "equalization" of cultural areas.

From an Italian perspective, the role played by cultural areas in supporting "the institutions of municipal culture in their tasks of regional importance, in particular in their financing and coordination" should highlighted. In Italy, this role of coordination and address is currently fragmented and hard to define.

Moving from EU and UN law, it should be emphasized that, in recent years, the legal framework on environmental law and policies (as example, regarding soil consumption) has become more closely linked to both urban planning and cultural heritage law. As suggested, the Italian legal order on environmental law provides several types of district authorities by agreement, with relevant tasks. In Italy we are involved in a major reform of regional and local policies. The integration of environmental and cultural policies is a significant topic. The design of new district authorities for cultural policies is a topic about which the Saxonian model may be very useful.

In the light of all the analyses carried out, it is necessary to verify whether it is possible to imagine the implementation of a model such as the Saxon one. First of all, it can be hypothesized whether the Regions can, with regional law, implement a system like the Saxon model of cultural areas. In light of the Italian constitutional framework on municipal autonomy and regional experiences on cultural districts, there are no reasons to give a negative answer. It would always be necessary to maintain the distinction between two levels of funding, a district level of funding (through common regional and local resources or only regional) and a level of local funding for initiatives of exclusively local interest. The real problem is that this model could take on only a limited number of cultural tasks, due to the division of competences between the State and the Regions in terms of protection and enhancement and in the unchanged national legislative framework ensured by the 2004 Code. The competences of the ministerial territorial articulations would be unchanged. A different perspective could be ensured if the regional law provided for the necessary acquisition of agreements of loyal collaboration (collaboration agreements pursuant to the 2004 Code) between the cultural districts, the Regions, the Ministry of Culture and its territorial articulations.

An even different perspective would open up if the state law provided, following the model of the regulation of territorial areas in environmental matters, the possibility or obligation for the Regions and local authorities to aggregate regional and local territorial competences in cultural matters in favour of compulsory district bodies, which could take the form of associations between territorial bodies, but also foundations. Also in this case, the problem that would arise would be: (1) introducing instruments of loyal collaboration (collaboration agreements); (2) assessing the need to introduce amendments to the 2004 Code; (3) safeguarding the principles of differentiation and subsidiarity provided for by Article 118 of the Constitution, at least in two perspectives: (3.1) providing for multiple levels of government, while safeguarding cultural tasks of exclusively local interest for the municipalities; (3.2) providing for regime differentiation for large cities, as is the case for Saxon urban cultural areas.

It is not possible, in the economy of this work, to go further than the analysis and prospecting of models. We can conclude by hoping that the reflection on the Saxon Cultural Areas Law may continue to provide a significant contribution to analysis in a comparative perspective for the reform of the Italian model and other European models.

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Cultural Policy against the Grain
流れに逆らう文化政策

liber amicorum for Matthias Theodor Vogt in honour of
his 65th birthday, edited by his colleagues and students

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30 years of the Saxon Cultural Area Act and its accompaniment in research and teaching by the Institute for Cultural Infrastructure Saxony

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(Scientists bid farewell to Professor Vogt)
Görlitzer Nachrichten Sächsische Zeitung, 29.Mai 2024, S. 16
https://kultur.org/wordpress/wp-content/uploads/SZ-Goerlitz-29Mai2024_Wissenschaftler-erabschieden_Professor-Vogt.pdf

(1) Invitation

by Dr. Stephan Meyer, Landrat des Landkreises Görlitz (shire county president) and Chairman of the Cultural Convention for the Upper Lusatia-Lower Silesia Cultural Area

Thirty years ago – on 1 August 1994 – the Saxon Cultural Area Act came into force.

In the same month, the Institute for Cultural Infrastructure Saxony was founded to support the Cultural Area Act in research and teaching. In order to attract the experts needed for cultural policy, the institute and the Zittau/Görlitz University shortly afterwards established the Görlitz degree programme 'Culture and Management,' which now has around 500 graduates who are successfully working all over the world.

We would like to celebrate this with you and Professor Matthias Theodor Vogt, the 'father' of the Act, on Friday, 24 May 2024, in Görlitz. After 27 years, he is retiring from his university position with a keynote speech on the future of cultural areas in Saxony. In cooperation with the Institute for Cultural Infrastructure Saxony and the Zittau/Görlitz University, we invite you to a symposium with keynote speeches from academia and practice, as well as a panel discussion.

We don't just want to celebrate and engage in navel-gazing within Saxony, but also to receive external input on the history and present of cultural policy in order to reflect together on the next thirty years of cultural spaces in Saxony. We have invited speakers from the Council of Europe, Tokyo, Riga, Naples, Krakow, Marburg and, of course, Görlitz, who will present core elements of state, municipal and independent cultural policy 'against the grain' in keynote speeches and short presentations. Afterwards, we will discuss with the chair of the Culture Committee in the Saxon State Parliament, members of the Culture Senate and Culture Convention, and representatives of the art scene.

(2) Welcome

Rector of Zittau/Görlitz University, Alexander Kratzsch
https://youtu.be/6Imh0TNbyIM?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

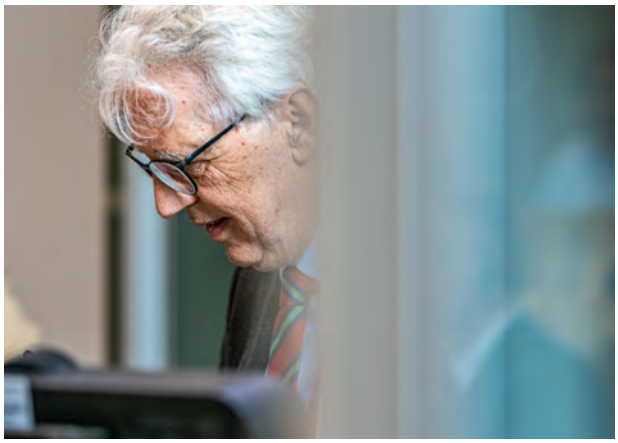
(3) Introduction

Landrat Stephan Meyer, Görlitz: *Outline of current problems and expectations of municipal cultural policy in Saxony by the Chairman of the Cultural Convention of the Upper Lusatia-Lower Silesia Cultural Area*,
https://youtu.be/cjROQsTqrCY?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

(4) Impulses: External suggestions for Saxony's cultural policy

Una Sedleniece, former State Secretary, Riga: *Memories of her time as a student in Görlitz from 1997 to 2001 in the first cohort of the UNESCO degree programme 'Culture and Management' in Görlitz at the Zittau/Görlitz University and the Institute for Cultural Infrastructure Saxony*
https://youtu.be/jKB-0Govtac?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

Kimura Goro Christoph (Sophia-University, Tokyo): *Japan learns from Saxony*
https://youtube/3gVq1Btd5sc?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0



Gregor Vogt-Spira (Philipps University of Marburg): *Emperor Augustus and the invention of 'cultural policy'*
https://youtube/00iVWcYxYTs?list=PLw U1_FuHyok3HB_je3E7rV8vtbJhOrrW0

Róża Zuzanna Różańska (Jagiellonian University Krakow): *Royal cultural policy of the Baroque era*
https://youtu.be/o4rVJFW1Yp4?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

Stefan Garsztecki (Chemnitz):
Province takes place in the mind
https://youtu.be/_XavYjqjEi0?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

Beate Sibylle Pfeil (Council of Europe expert):
Minorities in three classes. Current language policy in Ukraine
https://youtu.be/ZPjNQLPoiPc?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

Luigi Ferrara (University of Federico II Naples): The Saxon Cultural Areas Act as a model for Italian legislation?
https://youtu.be/yKympfBwEGo?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

(5) Coffee break in the auditorium

(6) Keynote speech

Matthias Theodor Vogt (IKS and HSZG):
On the future of cultural areas in Saxony
https://youtu.be/M5HIZcKotuc?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

(7) Discussion:
30 years of cultural areas in Saxony

Moderator: Cultural Secretary Annemarie Franke, Cultural Area Oberlausitz-Niederschlesien
Theresa Jacobs (Leipzig): Sorbian Institute Bautzen and Leipzig Dance Theatre
Franz Sodann MdL: Deputy Chairman of the Committee for Science, Higher Education, Media, Culture and Tourism in the Saxon State Parliament
Thomas Zenker (Zittau): Lord Mayor and member of the convention
Kirstin Zinke (Dresden): Senator for Culture and Managing Director of the Saxony State Association for Socio-Culture
https://youtu.be/ZevoHpg3fYk?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0








(8) Closing remarks

Benedikt Hummel, Mayor for Culture of the City of Görlitz as representative of the graduates of 'Culture and Management'
https://youtu.be/t7EuD-oQ_a4?list=PLwU1_FuHyok3HB_je3E7rV8vtbJhOrrW0

Many thanks to all the hard-working helpers who made this conference possible:

Dr. Annemarie Franke and her team from the Upper Lusatia-Lower Silesia Cultural Area: Sabine Hohlfeld, Manuela Mieth, Maria Förster, Liane Seiffert, Sabine Zimmermann-Törne, Anna Caban
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Clara Linnemayr [remote coordination from the USA], Zoe Schulmayer, Victoria Hentschel, Antonia Weber (students of „Culture and Management")

Joanna Bär and Alexandra Grochowski (translators)

Johanna Metzner, student of culture and management, and her family from the 'Bierblume Görlitz' https://www.bierblume-goerlitz.de/

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KULTURNY RUM HORNJA ŁUŽICA-DELNJA ŠLESKA
KULTUR Raum
OBERLAUSITZ-NIEDERSCHLESIEN

30 Jahre 1994 - 2024
INSTITUT FÜR KULTURELLE INFRASTRUKTUR SACHSEN

Hochschule Zittau/Görlitz

CHRYSANTIL
PHILANTHROPIC FOUNDATION

Freistaat SACHSEN

Dieter Bingen et al. (Editor): *Cultural Policy against the Grain* - liber amicorum for Matthias Theodor Vogt in honour of his 65th birthday, edited by his colleagues and students (Volume 2, English version) , ISBN 978-3-96100-250-4 (online), Universitätsverlag Chemnitz. Chemnitz, Tokyo, Napoli, Roma, Leipzig 2025

Matthias Theodor Vogt, Görlitz
Photos von Andreas Zgraja, Görlitz

Documentation of the art night celebrating 30 years of IKS and the premiere of the film 'Görlitz Rhythms – A Dance of Cultures' at Benigna, Görlitz

https://kultur.org/institut/30-years-iks/

The Art Night took place at the 'Benigna' on Görlitz's Untermarkt, one of the city's most historically significant buildings. It is named after Benigna Horschel. On Pentecost Sunday 1464, she was impregnated by the mayor's son Georg Emmerich and then callously abandoned. The conflict between the Emmerich and Horschel families was to become a turning point in the city's history, far more exciting than the teenage drama Romeo and Juliet [https://kultur.org/wordpress/wp-content/uploads/Hoch_Benigna_Spannender-als-Romeo-und-Julia_in_Vogt-et-al-Benigna-2024-04-25.pdf].

In the fine tradition of debate among Görlitz students of 'Culture and Management' [https://kultur.org/wordpress/wp-content/uploads/Vogt_3Gruende-fuer-Goerlitz-als-Studiengangsort_Benigna-2024-04-25.pdf] with complex issues in the city and region (and often far beyond), the institute received an enquiry from Robert Lehleiter and Christian Weise. They wanted a concept for the use of the 'Benigna'. Supervised by Matthias Theodor Vogt and Maik Hosang, 12 female students and 1 male student explored this issue in a research seminar, in collaboration with council archivist Siegfried Hoche and a Bonn theatre group, supervised by René Harder.

The theory [download: https://kultur.org/wordpress/wp-content/uploads/Hoch_Benigna_Spannender-als-Romeo-und-Julia_in_Vogt-et-al-Benigna-2024-04-25.pdf] **was put to the test** at the art night on 24 May 2024.

Art Night
Photo documentation
[https://kultur.org/wordpress/wp-content/uploads/IKS30y-Benigna24Mai2024_PhotosZgraja-k.pdf] with photos by Andreas Zgraja, Görlitz mail@andi.film.

Maestro Luca Lombardi and Miriam Meghnagi from Rome performed a work to mark the institute's 30th anniversary (world premiere and first joint performance of the couple).

Former Prime Minister Georg Milbradt from Dresden gave the laudatory speech.

Maria Davydchyk performed a Belarusian folk song.

Steffi Bärmann from Zittau recited in the Upper Lusatian dialect.

Elisabeth Domsgen from Görlitz recited a ballad by Bürger.

Honorary Consul Stefan Liebing from Hamburg commended the research and institute projects on Africa.

Princess Esperance from Bafoussam sang a Cameroonian song.

Joseline Amutuhaire performed a Ugandan dance, accompanied on the drums by Tomas Ondrusek from Waldheim.

Hans-Peter Struppe from Görlitz and Cornelia Wosnitza from Dresden sang cheeky modern songs.

The art night ended with a song by 21 former UNESCO students of 'Culture and Management' (class of 1997), who offered their congratulations in Latvian, Polish, Sorbian, Czech and German.

Museum: Thirty Years of IKS

Some of the 30 years of work of the Institute for Cultural Infrastructure Saxony is documented at https://kultur.org/. To mark the institute's anniversary, the archives were opened and an exhibition was put together, supported by our student intern Jakob Bormann as curator.

Film Görlitz Rhythms – A Dance of Cultures

Premiere 24 May 2024, Benigna Görlitz
on the occasion of the thirtieth anniversary of the Institute for Cultural Infrastructure Saxony

Concept: Matthias Theodor Vogt, Görlitz
Camera and editing: Andreas Zgraja, Görlitz mail@andi.film

The film can be downloaded free of charge as Creative Commons ShareAlike CC BY-SA (1.0 2.0 2.5 3.0 4.0) and installed on your own website.

'Without immigration, Görlitz is lost,' said the then mayor Siegfried Deinege during research for the study 'Arriving in the German world' [https://kultur.org/forschungen/merr/]. However, immigration is a process in which preconceived assumptions – positive or negative stereotypes – play a decisive role in choosing a destination.

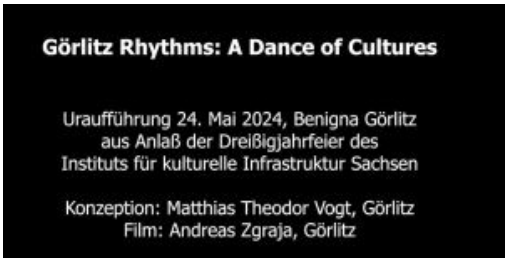
When Cameroonian mayor Roger Tafam promoted Görlitz in June 2023, he found that the city was so heavily disparaged as xenophobic on English-language social media that the parents of the young people he wanted to send to Görlitz for training vetoed the idea and none of them wanted to come.

The objective data tells a completely different story. No city in Saxony has a higher proportion of foreigners than Görlitz, not even Leipzig, and certainly not the state capital Dresden. Data from the Office for the Protection of the Constitution and the criminal investigation departments indicate peaceful coexistence (see Vogt 2023). If Görlitz entrepreneurs want to attract excellent workers in times of skilled labour shortages, they urgently need to counter the media's denigration with facts. The inglorious first-place finish of the Görlitz district in the European elections on 9 June 2024 has opened the door to further suspicions.

Roger Tafam suggested presenting parents with a film about the real Görlitz in English in YouTube format in order to respond to the allegations of 'manifest xenophobia' circulating on the internet. With the **film 'Görlitz Rhythms – A Dance of Cultures'** and in cooperation with the Municipal Hospital, the Maltese Hospital, the Zittau/Görlitz University and many civil society actors, the Institute implemented this idea together with Andi Zgraja, Görlitz (camera and editing).

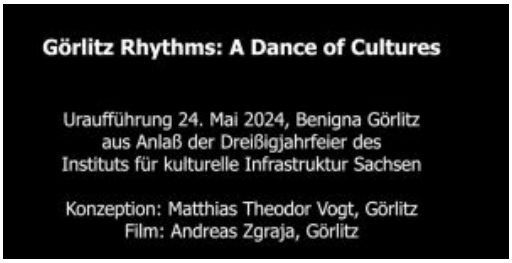
The film is short and asks only one question: **What is so special about Görlitz?** The data is impressive and stimulates discussion.

To mark the institute's anniversary, we are making the film available to all Görlitz-based companies in two audio tracks: (a) with Leoš Janáček's 2nd String Quartet 'Intimate Letters' and (b) a brass recording. **Which music do you prefer? And which one do you think your contacts will like best?**



Film "Görlitz Rhythms – A Dance of Cultures"
Musik: Leoš Janáček (1854-1928): String
[https://kultur.org/wordpress/wp-content/uploads/Goerlitz-Rhythms.IKS-30y.Janacek.2024-05-24_HD_neu_2.mp4]

Film "Görlitz Rhythms – A Dance of Cultures" Musik: Leoš Janáček (1854-1928): String Quartet No. 2, „Intimate Letters", IV. Allegro – Andante – Adagio. With kind permission of Erica Brenner and Jessica Sherwood [6 December 2023) Alexi Kenney, violin 1 (Chamber Fest Cleveland Young Artist), David Bowlin, violin 2, Dimitri Murrath, viola, Julie Albers, cello Performed on June 24, 2016 Mixon Hall, Cleveland Institute of Music Cleveland, Ohio Chamber Fest Season 5 http://chamberfestcleveland.com Audio: Ian Dobie – Dobie Digital Productions, Editing: Erica Brenner http://ericabrennerproductions.com



Film "Görlitz Rhythms – A Dance of Cultures"
Musik: O Chanucah (Instrumental).
YouTube Audio-Bibliothek
[https://kultur.org/wordpress/wp-content/uploads/Goerlitz-Rhythms.IKS-30y.Brass_.2024-05-24_HD_neu_1.mp4?_=1]

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Danielle Tchouanche Fezeu
Bafoussam (Cameroon)

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Studied political science, constitutional, social and economic history, sociology and education in Bonn. Doctorate in 1979. From 1980 to 1999, Poland expert at the Federal Institute for Eastern European and International Studies in Cologne. From 1999 to 2019, director of the German Poland Institute in Darmstadt. Since 2004, he has been an honorary professor at the Zittau/Görlitz University of Applied Sciences. He was a visiting professor at the Technical University of Darmstadt from 2012 to 2014. He is chairman of the Scientific Advisory Board of the Institute for Cultural Infrastructure Saxony in Görlitz. Main areas of research: Polish contemporary history, politics and political system, Polish foreign and security policy, German-Polish relations since 1945. Numerous publications since 1978, including: *Die Polenpolitik der Bonner Republik von Adenauer bis Kohl 1949-1991* (The Polish Policy of the Bonn Republic from Adenauer to Kohl 1949-1991), 1998 (Polish edition 1997); with Marek Halub and Matthias Weber: *Mein Polen – meine Polen. Zugänge & Sichtweisen* (My Poland – My Poles: Approaches and Perspectives), 2016 (Polish edition 2016); *Denk mal an Polen. Eine deutsche Debatte* (Think of Poland: A German Debate), 2020 (Polish edition 2021). Numerous awards, including the International Bridge Prize of the European City of Görlitz/Zgorzelec 2023.

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Freelance writer and lecturer. Studied history and philosophy in Tübingen, Munich, and Hamburg. Author of books on the history of the twentieth century (*Europa im amerikanischen Weltsystem*), World War I, and most recently on the American writer Saul Bellow (*Saul Bellow und die Anthroposophie*). Numerous articles on historical, regulatory, and cultural history topics. 2015-2019 in Cambridge, MA (USA), senior editor of the monthly magazine *The Present Age*.

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of the Donnaregina Foundation for Contemporary Arts, which oversees the Museo Madre in Naples. He has authored approximately seventy scientific publications and is a member of the Editorial Board for the journal P.A. *Persona e Amministrazione: Ricerche Giuridiche sull'Amministrazione e l'Economia*, as well as for Brill Research Perspectives in Art and Law. He is also part of the Scientific Committee for the series Diritto Comparato dell'Arte and is affiliated with CIRTAM, the Interdepartmental Research Center from Late Antiquity to Modern times at the Federico II University of Naples.

Dr. Annemarie Franke (Görlitz)
is a historian and has been working in cultural administration since 2023 as cultural secretary for the Upper Lusatia-Lower Silesia Cultural Area, based in Görlitz. 1990–1996: Studied modern and contemporary history (Eastern Europe), Slavic studies and political science in Bonn and Berlin (Master of Arts from Humboldt University in Berlin). Head of the Kreisau Foundation Memorial for European Understanding and member of the board between 2001 and 2012. 2015 Doctorate at the Historical Institute of the University of Wroclaw on a topic related to German-Polish relations; 2013–2018 Cultural Officer for Silesia at the Silesian Museum in Görlitz; 2019–2023 Research project assistant at the European Network Remembrance and Solidarity in Warsaw.

Prof. Dr. Kazuo Fujino (Kobe) 藤野一夫
Professor Emeritus of Performing Arts, Cultural Policy, and Arts Management at the Graduate School of Intercultural Studies, Kobe University, and Professor Emeritus of the Hyogo Professional College of Arts and Tourism, Toooyka. His area of specialization is the relationship between art and society, mainly in the performing arts of Germany and Japan. He has published numerous books and articles on Richard Wagner. He was a researcher at the Collegium PONTES Görlitz-Zgorzelec-Zhořelec. He was a president of the Japan Association for Cultural Policy Research (2022-2025) and has been involved in many cultural policy initiatives on national and local level. Among his recent publications are *Cultural Policy of Basic Municipalities—Why Art is Needed in Cities* (2019) and *Lecture on Cultural Policy for Everyone—Creating Cultural Commons* (2022).

藤野一夫（神戸）：神戸大学大学院国際文化学研究科名誉教授、兵庫県立芸術文化観光専門職大学副学長を経て名誉教授。専門は文化政策/アートマネジメント/音楽文化論/ドイツ思想史。特にリヒャルト・ワーグナーに関する数多くの著作を発表。コレギウム・ポンテスのシニアフェローも務めた。日本文化政策学会会長（2022-2025）を歴任し、国と地方自治体の数多くの文化審議会の座長、文化振興財団等の理事を務める。最近の著書に『基礎自治体の文化政策～まちにアートが必要なわけ』(2019)、『市民がつくる社会文化～ドイツの理念・運動・政策』(2021)、『みんなの文化政策講義～文化的コモンズをつくるために』(2022)などがある。

Prof. Dr. Stefan Garsztecki (Chemnitz)
Political scientist. From 1983 to 1989 he studied political science (major subject), modern and contemporary history and cultural geography (minor subjects) at the University of Bonn (Magister Artium in political science). From 1989 to 1994 he held a doctoral scholarship from the Friedrich Ebert Foundation. After completing his doctorate in political science in 1995 witz Klaus Ziemer and Kurt Düwell at the University of Trier, he holdsa the Chair of Cultural and Area Studies at Chemnitz University of Technology since 2010.

Sebastian Gemkow (Dresden)
Minister of State for Science, Culture and Tourism of the Free State of Saxony since 2019. Studied law at the universities of Leipzig, Hamburg and Berlin, completed his legal training in Leipzig with the first and second state examinations. In 2007, he established himself as a lawyer in Leipzig, has been a member of the Saxon State Parliament since 2009 and President of the Parliamentary Forum for Central and Eastern Europe since 2010. In 2014, he became Honorary Consul of the Republic of Estonia for Saxony, Saxony-Anhalt and Thuringia. From 2014 to 2019, he was Saxon State Minister of Justice.

Prof. PhDr Miloš Havelka CSc (Prag)
Professor at the Faculty of Humanities at Charles University. His main areas of interest are questions of historical sociology of knowledge, theories of historiography and sociology, and the history of modern Czech thought. In 2002 and 2004/05, he was a visiting professor at the Institute for European Studies at Chemnitz University of Technology. In addition to numerous studies in domestic and foreign journals, he has published, among other things, the annotated two-volume anthology *Der Streit um die Bedeutung der tschechischen Geschichte* (The Dispute over the Meaning of Czech History), a collection of studies on historical sociology of knowledge *Ideen – Geschichte – Gesellschaft* (Ideas – History – Society), a collection of his polemical and critical texts *Geschichte und Kritik* (History and Criticism), and the anthology *Glaube, Kultur und Gesellschaft* (Faith, Culture, and Society). He is co-editor of the monograph series *Religious Cultures in Modern Europe*, published by Vandenhoeck & Ruprecht.

Prof. Dr. Goro Christoph Kimura (Tokyo) 木村 護郎クリストフ（東京）
graduated from Hitotsubash University in Tokyo in 2002 with a dissertation entitled *Perspectives on human intervention for the preservation and revitalisation of minority languages*. He has been employed at Sophia University in Tokyo since 2004. He has been an associate professor since 2007 and a full professor at Sophia University since 2012 and is currently Dean of the Faculty of Foreign Studies. He has worked as a visiting professor at the Slavic-Eurasian Research Centre of Hokkaido University in Sapporo and as a visiting scholar at the Sorbian Institute (Bautzen), the European University Viadrina, the University of Leipzig and the Collegium Pontes Görlitz-Zgorzelec-Zhořelec. Kimura has been a board member and managing director of the Japan Society for the Study of Slavic Languages and Literatures since 2022.

2002年に東京の単一橋大学を卒業し、博士論文「少数言語の保存と再生における人間の介入に関する展望」で学位を取得しました。2004年から東京のソフィア大学に勤務し、2007年から准教授、2012年から教授を務め、現在は外国語学部の学部長です。北海道大学（札幌）のスラヴ・ユーラシア研究センターで客員教授、ソルビアン研究所（バウツェン）、ヨーロッパ大学ヴィアドリーナ、ライプツィヒ大学で客員研究員として勤務。彼は、ポンテス・ゴリツィ-ズゴジェレツ-ゾルジェレツ・カレッジウムの研究員でした。2022年から日本スラヴ語文学研究会の理事兼事務局長を務めている。

Prof. Dr. Peter Lah (Rom)
Dean of the Faculty of Social Sciences, Pontifical Gregorian University. Ph.D. in Communication Studies, Northwestern University, 2004. 1992 –1995 Theology studies (Philosophisch-Theologische Hochschule St. Georgen, Frankfurt am Main, Germany). Professor (professore ordinario) at the Pontifical Gregorian University where, since 2011, he has been teaching courses in media studies and journalism at the Faculty of Social Sciences. In recent years his interest expanded to questions of media literacy and organizational communication. Between 2008 and 2011 he held teaching and administrative positions at the Faculty of Media in Ljubljana and at Faculty of applied social sciences in Nova Gorica, Slovenia. From 2004 to 2007 he was assistant professor at Saint Louis University, Missouri. 2006 –2008 and 2012 Chair of the expert commission on pluralism in the media (Ministry of culture, Republic of Slovenia). Peter Lah is member of the Society of Jesus. Having completed the novitiate in 1988, he was ordained priest in 1995. Recent publications: Lah, Peter (2022): *Social media and communication for peace*. In: Turco, Danilo (ed.), *Ethics of coexistence or ethics of conflict* (S. 47–70). G&B Press. Lah, Peter (ed.) (2021): *Navigating hyperspace. A comparative analysis of priests' use of Facebook*. Resource Publications. Lah, Peter (2020): T*he scandal of secrecy. Gregorianum* 101(2): 405–425..

Prof. Dr. Luca Lombardi (Rom)
Luca Lombardi is one of his country's most internationally renowned composers. After graduating from the German School in Rome with Dr. Joseph Vogt, he studied in Rome, Vienna, Cologne, Utrecht and Berlin (with B.A. Zimmermann, K. Stockhausen and P. Dessau, among others). He received his doctorate in German studies from the University of Rome. From 1973 to 1994, he was professor of composition at the conservatories in Pesaro and Milan, and has been a freelance composer ever since. He

has composed around 180 works, including five operas. A selection of his writings has been published under the title *Construction of Freedom* (Baden-Baden, 2006). He is a member of the Academy of Arts in Berlin and the Bavarian Academy of Fine Arts (Munich). He lives alternately on Lake Albano (Rome) and in Tel Aviv. www.lucalombardi.net.

Dr. Stephan Meyer (Görlitz)
Studied industrial engineering and economics. In 2006, he completed his studies with a thesis on *Energy efficiency comparison in the manufacturing industry for Germany, Poland, and the Czech Republic*. In 2007, he obtained the qualification of European Energy Manager (IHK Bildungszentrum). He received his doctorate in 2011 with a thesis on *Decision-making model for value chain-oriented emission reduction in transition countries*. He worked at SEC Energie-Contracting, at Nokia in Espoo, Finland, and was a guest lecturer at the German-Kazakh University in Almaty. He joined the Junge Union in 1998 and has been politically active ever since, currently as deputy CDU district chairman in the district of Görlitz. From 2009 to 2022, he was a member of the Saxon State Parliament, chairman of the Committee for Science and Higher Education, and parliamentary secretary of the CDU parliamentary group. Since September 2022 he is *Landrat* of the shire county Görlitz.

Dr. Beate Sibylle Pfeil (Freiburg)
Lawyer and independent researcher specialising in issues relating to national minorities in Europe. She has made a name for herself in her field through numerous lectures and seminal publications. From 1996 to 1999, she was a research assistant and from 1999 to 2016 deputy scientific director of the South Tyrolean Institute for Ethnic Groups in Bolzano, Italy. From 2017 to 2023, she was a Council of Europe expert responsible for the so-called Language Charter, and from 2017 to 2022, she was vice-chair of the European Centre for Minority Issues in Flensburg. Co-founder and co-editor of the *European Journal for Minority Issues*.

Prof. Dr. Oliver Reisner, (Tbilissi)
Since 2016, Oliver Reisner has been Jean Monnet Professor of European and Caucasian Studies at Ilia State University, teaching bachelor‘s, master‘s and doctoral students with a focus on European Studies and Caucasian Studies. In 2000, he received his doctorate from Georg August University in Göttingen, Germany, in Eastern European History, Slavic Studies, and Medieval and Modern History. From 2000 to 2003, he developed and coordinated a master‘s programme in Central Asia/Caucasus at the Institute for Central Asian Studies at Humboldt University in Berlin. From 2003 to 2005, he worked as a programme manager for human rights at World Vision Georgia, implementing a project on civil integration in the Samtskhe-Javakheti and Kvemo Kartli regions of Georgia. From 2005 to 2015, he was a project manager at the EU Delegation to Georgia, responsible for democratisation, minorities, education, youth, labour and social affairs. M;ain research topics: 1) Nation building and identity in the Caucasus in the 19th and 20th centuries; 2) Memory studies on dealing with the Soviet past in Georgia and the Caucasus; 3) History of Caucasian studies as a regional science; and 4) The role of religion in Georgia.

Dr.-Ing. Matthias Rößler (Dresden)
President of the Saxon State Parliament from 2009 to 2024. Graduate engineer in mechanical engineering, 1979 to 1985 research assistant at the University of Transport with teaching assignment (doctorate in 1985), 1985 to 1990 development engineer and head of a research team at the Lokomotivbau – Elektronische Werke Hennigsdorf combine. 1989 to 1990 Member of the GDR Executive Committee of the ‘Demokratischer Aufbruch’ (Democratic Awakening), member of the Dresden District Round Table and the Coordination Committee for the Re-establishment of the Free State of Saxony. 1990–2024 Member of the state parliament. 1994 to 2002 Minister of State for Culture, 2002 to November 2004 Minister of State for Science and the Arts.

Dr. Róża Różańska (Krakau)
Assistant Vice President in Quality Control and User Acceptance Testing at Hongkong & Shanghai Banking Corporation Holdings PLC (HSBC) and since 2003 Science Ambassador for the Women in

Tech Poland programme funded by the Ministry of Science, under the auspices of the Polish Academy of Sciences. She holds a PhD with distinction in Management and Quality Sciences (thesis nominated for the European Business History Association award) and studied at the Sorbonne in Paris as well as at the Brazilian science diplomacy school InnSciD. Róża Różańska is predominantly a historian, specialising in Intellectual Property Law, Technology Transfer, and Executive Management. She is also a harpsichordist and member of the British Harpsichord Society, UNESCO Global Tech Diplomacy Forum and The Internet Society. She has lectured widely across Europe, with over 50 conference talks, 15 scientific articles and 350 journalistic texts. She developed her expertise in executive decision-making and leadership through courses from the University of Michigan and Università Bocconi, among others. She previously worked in London, managed the Polish Research Centre in London, served on the National Council for PhD Students, and in 2025 represented Poland at the UN/ITU high-level event marking the 20th anniversary of the World Summit on the Information Society in Geneva.

Dipl.-Kffr. (FH) Una Sedleniece M.A. (Riga)
Deputy Director of the Latvian National Museum of Art (since 2015). She studied "Culture and Management" at the University of Applied Sciences Zittau/Görlitz and the Institute of Cultural Infrastructure Saxony (1997-2002) as well as international cultural relations (1992-1996) and museology at the Latvian Academy of Culture (2006-2010). Chairwoman of the Expert Committee for Cultural Heritage and member of the Board of Trustees of the State Cultural Capital Foundation (2023–2025). Head of the Baltic Summer School of Museology (since 2022) and Chair of the Board of the Baltic Society for the Promotion of Museology (since 2013). Head of the Latvian Museum Council (2020–2022). Worked in several Latvian museums, in the State Authority on Museums (2002–2005), in the Ministry of Culture of the Republic of Latvia (2005–2011), including as Deputy State Secretary for Cultural Policy (2006–2007).

Prof. Dr. Beat Siebenhaar (Leipzig)
Beat Siebenhaar is a linguist and dialectologist specialising in the study of linguistic varieties, language in the new media, prosody and dialectology. He studied German, philosophy and literary criticism at the University of Zurich from 1983 to 1991 and received his doctorate in German linguistics in 1999 with a dissertation entitled *Sprachvariation, Sprachwandel und Einstellung. Der Dialekt der Stadt Aarau in der Labilitätszone zwischen Zürcher und Berner Mundartraum*. He holds the Chair of German Linguistics (specialising in linguistics of varieties) at the University of Leipzig since 2008. Before that, he worked at the University of Zurich, the University of Bern and the University of Lausanne, among others. Siebenhaar has been Dean of the Faculty of Philology at the University of Leipzig since October 2016 till October 2025.

Prof. Dr. habil. David Simo (Jaunde)
Director of the German-African Science Centre in Yaoundé. Professor Emeritus of German Studies and Cultural Studies. Former Head of the German Department at the Faculty of Arts, Literature and Humanities at the University of Yaoundé 1 in Cameroon. Former President of the African Association of Germanists. Visiting Professor at German and French universities. Reimar Lüst Prize winner of the Humboldt Foundation. Former Humboldt Science Ambassador in Cameroon.

Prof. Dr. habil. Anton Sterbling (Fürth)
Co-founder of the dissident Romanian-German writers' group 'Aktionsgruppe Banat' (1972-1975). Studied social sciences at the University of Mannheim, doctorate and habilitation at the University of the Federal Armed Forces in Hamburg. Lecturer at the University of the Federal Armed Forces in Hamburg, the University of Heidelberg, the University of Bonn and, until 2019, at the Saxon Police University (FH). Numerous academic and literary publications. Latest publications: *Ungewissheiten heimwärts fliehender Krähen* (Uncertainties of crows fleeing home): Recent poems, short prose and stories. Ludwigsburg 2025; *Ist die Europäische Union eine Wertegemeinschaft?* (Is the European Union a community of values?) In: *Zeitschrift für Balkanologie*, vol. 60, no. 1, Wiesbaden 2024.

Prof. Dr. habil. Susanne Vill (Wien)
Professor emerita of Theatre Studies at the University of Bayreuth, lecturer in Theatre Studies and Musicology at the Universities of Vienna, Munich, Marburg, Erlangen, Zürich. Singer, director. Member and contributor of the International School of Theatre Anthropology (ISTA) and the European Music Theater Academy. Congress organizations and edition of conference reports: *Ausbildung für Musiktheater-Berufe* [Training for music theater professions] 1986 in Munich for the founding of the Bavarian Theater Academy; *Das Weib der Zukunft' - Frauengestalten und Frauenstimmen bei Wagner* [The Woman of the Future' – Female Characters and Female Voices in Wagner] 1997 in Bayreuth; *Richard Wagner und die Juden* [Richard Wagner and the Jews] in cooperation with Tel Aviv University 1998 in Bayreuth. Numerous publications on music, theater, opera, musicals, singing and media performances. Productions, theater studio with guest performances in Germany and abroad, concerts, radio recordings and television broadcasts. www.susanne-vill.at.

Prof. Dr. habil. Dr. h.c. Gregor Vogt-Spira (Marburg)
Professor emeritus of Classical Philology at the Philipps University Marburg. After completing his doctorate and his habilitation at the University of Freiburg i.Br., he was a Founding Professor of Classical Philology at the University of Greifswald from 1994 to 2006, where he helped to rebuild the Institute of Classical Studies. From 2008 to 2012, he was Secretary General of the German-Italian Centre Villa Vigoni on Lake Como (Italy), a European interface for the humanities and sciences, politics, economy and culture. In 2001, he founded (together with Jerker Blomqvist, Lund) the network Colloquium Balticum of the Baltic Sea countries. In 2020, he was awarded an honorary doctorate by the University of Riga.

Prof. Dr. phil. Dr. habil. Prof. h.c. Dr. iur. h.c. Matthias Theodor Vogt (Görlitz)
Managing director of the Saxonian Institute for Cultural Infrastructures (https://kultur.org/), professor emeritus at the Zittau/Görlitz University, honorary professor at the University of Pécs and Doctor iuris honoris causa of Ilia University, Tbilisi. Master of Arts in Theatre Studies with a focus on modern German literature and philosophy in Munich, Paris and Aix-en-Provence. Doctorate in musicology. Habilitation in urban studies. Visiting professor at universities and music academies in Vienna, Prague, Wroclaw, Krakow, Dresden, Boston, Yaounde, Cairo, Ulaanbaatar, Shanghai, Kobe and Toyooka, as well as at the Pontifical Gregorian University and the Pontifical University of Saint Thomas Aquinas, both in Rome. Theatre experience at Moscow, Russe, Vienna, Salzburg, Venice, Milan, Rome, among others. Research interests: cultural policy and art policy, cultural history including medical history, minorities. Has taught at 60 universities in Europe, Africa, Asia and North America.

マティアス＝テオドール・フォークト（ゲルリッツ）
は、ザクセン州文化インフラ研究所（https://kultur.org/）の所長兼経営責任者、ツィッタウ/ゲルリッツ高等専門学校名誉教授、ペッチ大学名誉教授、ティビリシのイリア大学名誉法学博士です。ミュンヘン、パリ、アAix-en-Provenceで演劇学、現代ドイツ文学、哲学の修士号を取得。音楽学の博士号を取得。都市計画学のハビリタツィオンを取得。ウィーン、プラハ、ヴロツワフ、クラクフ、ドレスデン、ボストン、ヤウンデ、カイロ、ウランバートル、上海、神戸、豊岡の大学および音楽大学、ならびにローマのグレゴリアナ大学とアンジェリカム大学で客員教授を歴任。演劇経験：モスクワ、ルッセ、ウィーン、ザルツブルク、ベネチア、ミラノ、ローマなど。研究分野：文化政策と芸術政策、文化史（医学史を含む）、少数民族。ヨーロッパ、アフリカ、アジア、北米の60の大学で教鞭を執る。

Dr. phil. Reiner Zimmermann (Dresden)
Former head of department, born in Neustadt/Orla, Thuringia. 1960–1965 Studied musicology, art history, and theater studies in Leipzig, editor at the music publishing house Editions Peters Leipzig/Dresden 1966–1985, music theater dramaturge at the Dresden Music Festival 1986–1991, 1991 to 2003 Head of the Art Department at the Saxon State Ministry of Science and the Arts. Publications include *Mehr Sein als Scheinen. Kuturpolitik in Sachsen nach 1990* (Donatus-Verlag, Niederjahna/Käbschütztal, 2022). Editor of musical works by Mendelssohn, Fauré, Debussy, Meyerbeer, and others; editor of the musical

writings of Camille Saint-Saens and the autobiography of Jules Massenet. Author of *Giacomo Meyerbeer - Biografie nach Dokumenten* (Giacomo Meyerbeer - Biography Based on Documents), 1991. Since 2009, editor-in-chief of the *Denkmäler der Tonkunst in Dresden* (Monuments of Music in Dresden). See also *Viele Stimmen. Festschrift für Reiner Zimmermann zum 75. Geburtstag am 27. November 2016*, published by his friends.

To listen, to reflect, to act
Cultural Policy against the Grain

What are the premises of today's cultural policy? What insights can the past, present and theory offer for a contemporary cultural policy? How can art counteract agoraphobia, digital isolation and populist temptations? How can local authorities give their citizens ample space to develop civil society solidarity 'for the good of the city. For only when the city is well will you be well.' (It should be noted that Jeremiah 29:7 addresses immigrants who are to become citizens in foreign Babylon. Does our cultural policy also achieve this?) Are the arts not precisely the place where we can first listen to the other before we think together and then act together?

It is the historical achievement of Matthias Theodor Vogt, in the Free State of Saxony, which was re-established in 1990, to not only conceive the Saxon Cultural Area Act between 1991 and 1995 in a unique process of analysis and dialogue with the state, municipal and civil society levels, but also to have it enshrined in law and, last but not least, to have it implemented with little friction. It was therefore only natural that, on the thirtieth anniversary of the law's entry into force, the cultural areas of Saxony invited Matthias Theodor Vogt's colleagues and students to a conference entitled 'Kulturpolitik gegen den Strich' (Cultural Policy Against the Grain). We are hereby presenting the results of this conference in a commemorative publication to mark his 65th birthday.

What can art do better and differently than the digital world? What political, structural, economic, and, last but not least, intellectual conditions are necessary for art to develop its own life for the benefit of humanity? The cover image shows Haus Klingewalde, Görlitz, home of the Institute for Cultural Infrastructure Saxony since 1998. The watercolour by Lynne Beal, Cologne, relates to a conversation with Matthias Theodor Vogt about the vanishing point in Alberti: *De pictura* | *De pittura* (1435 – 1436). According to Corinna Laude, in the *centricus punctus* of Alberti's intromission theory, 'the orthogonal vanishing lines, the depth lines of the representation, converge "quasi persino in infinito" (as it were out into infinity), it lies in infinity – and thus, according to contemporary understanding, in God'. Which "vanishing points" does today's post-secular society use?

How can political science in Chemnitz interact in a multidisciplinary, cross-continental manner, always with reference to human beings themselves, with cultural studies in Tokyo and linguistics in Leipzig, with legal studies in Naples and social sciences in Rome? This volume shows that cultural policy studies require a fact-based holistic approach and that this may be achieved by working together.

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