

Comparative Study on (Dis)use of Heritage in Ouro Preto-Br and Oporto-Pt

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Abstract:

Appropriation arrangements of a particular territory expose the contradictions inherent in life in society. Those contradictions, in turn, do not depend on the existence of laws and regulations, setting up the materialization of different evolutionary processes. For this investigation, urban dynamics are influenced and compelled to respond to the particular pressures of capitalism, a late capitalism in the case of Ouro Preto, in which patrimonialization incurs break hegemonic models of space uses and reuses. The state apparatus appears plastering latent transformations and confirms the role of the 'heritage-person' as a potential heritage aggressor. This research's main objective is to compare the dynamics of the heritage's appropriation and use in Ouro Preto, Minas Gerais, Brazil and Oporto, Portugal. More specifically, it searches to understand the historical perspective of historic centre appropriation, its heritage value and its value for the tourism; to compare the heritage conservation legislation in both cities; and to study the problems of public equipment rehabilitation. This article presents the first step results of comparisons between the legislation on the urban rights (real estate assets) in Portugal and Brazil. It also presents the statistical comparison of types of infringement and their penalties applied by the historic centres rehabilitation programmes in Oporto and Ouro Preto. Through a systematic survey, the researchers diagnosed the main infringements committed to heritage assets. The use of records allowed to understand and to classify the types of offenses. These data for both cities will be compared, as well as each country's or international guidelines regarding urban rehabilitation.

Keywords: Historic Centre; Infringement; Heritage; Tourism; Urbanism

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Resumo:

As modalidades de apropriação de um determinado território expõem as diversas contradições inerentes à vida em sociedade. Essas, por sua vez, independem da existência de leis e regulamentos, configurando a materialização de processos evolutivos distintos. No caso que se propõe investigar, essa dinâmica é influenciada e compelida a responder às pressões próprias do capitalismo, tardio no caso de Ouro Preto-MG, no qual a patrimonialização incorre em ruptura com modelos hegemônicos de usos e reusos do espaço. O aparato estatal manifesta-se engessando transformações latentes, corroborando para que o sujeito-patrimônio passe a ser visto como potencial agressor ao patrimônio. O objetivo principal dessa pesquisa é comparar as dinâmicas de apropriação e uso do patrimônio em Ouro Preto-MG-Brasil e Porto-Portugal e, mais especificamente, compreender as perspectivas históricas de apropriação do centro histórico, seu valor patrimonial e para o turismo; comparar a legislação dessas cidades, no que se refere à preservação do patrimônio; estudar o patrimônio imobiliário e as problemáticas da reabilitação de equipamentos relacionados com a hotelaria. No caso desse artigo, apresenta-se os resultados da primeira etapa, que foi a comparação entre a legislação que regula a área do direito do urbanismo (patrimônio imobiliário) em Portugal e no Brasil e a comparação estatística sobre o tipo de infrações e as respectivas sanções aplicadas pelas reabilitações dos Centros Históricos das cidades do Porto e de Ouro Preto. Para essa etapa, os pesquisadores, por meio de um levantamento sistematizado, diagnosticaram as principais infrações cometidas pelos estabelecimentos hoteleiros da cidade no que se refere ao patrimônio. Para tanto, utilizaram fichas que permitiram compreender e classificar os tipos de infração. Esses dados serão comparados entre si (Porto e Ouro Preto) e com alguma diretriz (específica de cada país ou internacional) no que se refere à reabilitação de equipamentos hoteleiros.

Palavras-chave: Centro Histórico; Infração; Patrimônio; Turismo; Urbanismo

Resumen:

Las modalidades de apropiación de un determinado territorio exponen las diversas contradicciones inherentes a la vida en sociedad. Esas, a su vez, dependen de la existencia de leyes y reglamentos, configurando la materialización de procesos evolutivos diferentes. En el caso que nos proponemos investigar, esa dinámica está influida y obligada a responder a las presiones propias del capitalismo tardío en el caso de Ouro Preto-MG, en el que la capitalización incurre en la ruptura con modelos hegemónicos de usos y reutilizaciones del espacio. El aparato estatal se manifiesta sacando a relucir transformaciones latentes, donde el sujeto-patrimonio

pasa a ser visto como potencial agresor al patrimonio. El objetivo principal de esta investigación es comparar las dinámicas de apropiación y uso del patrimonio en Ouro Preto-MG-Brasil y Porto-Portugal. Y, más específicamente, comprender las perspectivas históricas de apropiación del centro histórico, su valor patrimonial y turístico. Comparar la legislación de esas ciudades, -en lo que se refiere a la preservación del patrimonio- y, estudiar en el patrimonio inmobiliario las problemáticas de rehabilitación de equipos relacionados con la hostelería. En el caso de este artículo, se presentan los resultados de la primera etapa en la que se realizó la comparación entre la legislación que regula el área del derecho urbanístico -patrimonio inmobiliario- en Portugal y Brasil. Así como la comparación estadística sobre el tipo de infracciones y las respectivas sanciones aplicadas a las rehabilitaciones de los centros históricos de las ciudades de Porto y Ouro Preto. Los investigadores por medio de un levantamiento sistematizado, diagnosticaron las principales infracciones cometidas por los establecimientos de hostelería de la ciudad en lo referente al patrimonio. Para ello, utilizaron fichas que permitan comprender y clasificar los tipos de infracción. Esos datos serán comparados entre sí (Porto y Ouro Preto) y con alguna directriz (específica de cada país o internacional) en lo que se refiere a la rehabilitación de equipamientos de hostelería.

Palabras Clave: Centro Histórico; Infracción; Património; Turismo; Urbanismo

1. Introduction

The heritage's appropriation by the tourism market is not an isolated or spontaneous process. As result of international efforts to sensitize communities on the importance of cultural preservation, a number of international documents have been prepared on this subject. The Venice Charter (1964) is the starting landmark of the *global patrimonialization process* (Costa, 2011). That charter cements a comprehensive notion of "cultural asset" more linked to the historical field. It also proposes stricter and modern legal protection standards. The UNESCO's Natural, Cultural and World Protection Convention (1972), the Nairobi Recommendation (1976), the Washington Charter (1987) and the Vienna Memorandum (2005), among other culture heritage charters, define a global understanding over this subject. These documents and its guidelines affect national and subnational levels, producing public policies, legislation and renewal of asset management models. Among formal documents it is to stand out the Brazilian 1988 Magna Carta and the Portuguese 107/2001 Decree.

Ouro Preto, one of the most important so-called Brazilian "historic cities", was the first one to be declared a National Monument in 1933. In 1937, after the establishment of the Historical and Artistic National Heritage Service, Ouro Preto was protected by a federal inheritance protection law and, in 1980, it was recognised as a Humanity Cultural Heritage City by UNESCO.

In Portugal, the Historic Centre of Oporto was included in the UNESCO's Indicative List of World Heritages Sites, in 1996.⁵⁸ This fact, as well as it was for Ouro Preto, has boosted an increasing promotion of that portion of the city of Oporto. As pointed out by Costa (2011:31), "there is a real world racing of urban governances and of the States for the inclusion of medium and small towns as cultural assets around the planet in the international tourism network." The culmination of this process is the international seal as World Cultural Heritage by UNESCO, which both cities possess.

This reality leads us to question if the urbanistic recovery dynamics caused a larger trend to infringe urbanistic laws on the resident population, in the numerous branches participating companies and, specially, on the urban recovery agents. These dynamics have also brought great influence of domestic and international tourism activities to those areas.

The analysis of this trend towards the infringement of the urbanistic legislation takes into account the facts shed statistically in administrative offense processes especially between 2012 and 2015 in the Portuguese case, and between 1999 and 2013 in the Brazilian case.

For a better understanding of this possible development, it was carried out a bibliographic research and a brief incursion on the statistical figures of the resident population, on the integrated business dynamics in those historic centres, on the evolution of the real estate business involving the buildings in this part of the polis, on the recovery works licenses issued and finally on the infringement that resulted in administrative offense processes.

We call the attention of all readers that this article is a factual analysis, not wishing us, here and now, to deepen scientific and legal analysis of the conceptualization, the evolution and the dynamics of the Administrative Law science.

⁵⁸ Available at: <http://whc.unesco.org/en/list/755>, consulted on 2016-02-01. The bases to integrate the Historic Centre of Oporto in the UNESCO's World Heritage Sites List is concerned to the fact that it was considered by that international organization as a place able "(...) to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history(...)".

2. A brief look at the legislation

In Brazil, as shown by Villaschi (2014) and Costa (2011), the heritage defense movement is elitist, and has been gained push from the times of the Brazilian Old Republic (1889-1930). To Rabelo (2014:5), it was "in this period of time that emerged demonstrations on the need of laws by the state entity over the situation of its heritage, reiterating the importance of developing specific legislation"

In Portugal, the idea of preserving the antique and the concern to maintain the original structure of the properties were already experienced since its formation as a country, dated around 1093 AD, during the Middle Ages, although not so frequent. During the Renaissance, when rescuing the classical heritage, we can observe the beginning of concern for the heritage preservation, and the assets that comprised are called, according to Antonieta Vera de Sousa (2010, online) as "antiquilhas". At the same period of time, it was designed what is considered as the first document on state intervention in preservationist field, the decree of August 20, 1721, proclaimed by Dom João V. (Rabelo, 2004: 6)

In Portugal, there are currently two heritage protection levels, both under the 107/2001 Law. One of them is the asset's classification applied to movable and immovable cultural assets. Both may be included in one of the three levels of interest over the heritage protection: national, public or municipal asset. The other one is the inventory that, according to Rabelo (2014) and to the Article 19, I, is a systematic and updated survey that tends to be exhaustive, concerning cultural heritage in national, public or private levels, movable or immovable, viewing their identification.

Either the assets classified or being classified shall be compulsorily inventoried, regardless the outcome of the administrative procedure in its classification. Only in exceptional cases, a private property not yet classified will be inventoried without the consent of its owner. In Brazil, there is an urbanistic instrument named "*Tombamento*" - a preservation order. It's an institute of Cultural Rights which aims to recognise the cultural value of an asset using technical-scientific criteria for granting value emanating from the competent authority. It interferes in one or more elements of the property rights (Filho and Telles, 2007).

According to Pires (1994) and Rabelo (2014) both countries had foreseen the rights to culture as fundamental rights in their Constitutions, bestowing to the state the duty to ensure it through interventionist actions. In Portugal, the Law 13/85 established the classification, later on

overruled by Law 107/2001. In Brazil, the Decree-Law 25/1937 regulates the listing of heritage assets of public interest and had conceptual advances and clarifications in the 1988 Constitution, in particular Articles 215 and 216.

Constitute Brazilian cultural heritage assets of material and immaterial nature, taken individually or together, that are reference carriers to the identity, the action and the memory of the various groups of Brazilian society, which include: the forms of expression; the ways of creating, making and living; the scientific, artistic and technological creations; the works, objects, documents, buildings and other spaces intended for artistic and cultural events; the urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value. (Art. 216).

Although the classification in Portugal was created later than the Brazilian Institute of "Tombamento", it presents a considerably larger amount of assets classified than Brazil. The Lusitanian law is relatively more current compared to the Brazilian inventorying rules and it needs to be interpreted and matched to the diverse Brazilian reality, which often creates doubts regarding to its application (Rabelo, 2014).

Rabelo (2014) shows that one of the conflicting points between the Brazilian "Tombamento" and the Portuguese classification is the no using by the Brazilian preservation order of the protection gradation encountered in the Lusitanian legislation. This gradation can help to increase the number of protected assets because, if one takes into account its intrinsic characteristics, the degree of protection can be adjusted, balancing asset's preservation, use and re(use).

3. A glance at Oporto

The renewal of the Historic Centre of Porto has been managed and carried out by PORTO VIVO, SRU - Sociedade de Reabilitação Urbana da Baixa Portuense S.A (Urban Rehabilitation Society), a public stock corporation, whose stakeholders are the State, represented by IHRU - Instituto da Habitação e da Reabilitação Urbana, (Housing and Urban Rehabilitation Institute), and Oporto City Council.⁵⁹ Since 2012 that SRU acts in that area with powers delegated by

⁵⁹ According to the information on the company's website - <http://www.portovivosru.pt/pt/porto-vivo-sru/apresentacao> – consulted on 2016-01-11 here transcribed: PORTO VIVO, SRU, - Sociedade de Reabilitação Urbana (Urban

Oporto's Municipal Assembly, assigning to PORTO VIVO the following skills: licensing and admission to prior notice of urban planning and use permission; adoption of protection measures of urban legality; forced lease; levying charges; demolition of buildings; right of first refusal; single project; expropriation; imposition of the obligation to renew and coercive works; inspections and surveys; receipt of due concessions or compensation; restructuring of the property; easements; forced sale.

The Urban Renewal Area of Oporto Historic Centre has been approved by its City Council, at an ordinary meeting on June 4th, 2012, and published in the Official Gazette by own instrument.⁶⁰ The embracing area is included in that publication, with defined configuration.⁶¹

3.1 The Assessment Special Comitee

The intervention and connection that must necessarily be made between PORTO VIVO and the Direção Regional de Cultura do Norte (Regional Northern Culture Management) - DRCN⁶² -

Rehabilitation Society) of Baixa Portuense S.A., (...) incorporated under and pursuant to Decree 104/2004 of May 7th, which aims to promote urban renewal of the critical area of recovery and urban redevelopment of the City of Oporto.

Incorporated on November 27th, 2004, PORTO VIVO, SRU, has the role of promoting the renewal of the respective area of intervention and, in particular, to guide the process, draw up the intervention strategy and act as mediator between owners and investors, owners and tenants and, if necessary, take over the renewal operation with the legal means available.

The performance of Porto Vivo, Urban Renewal of Baixa Portuense, until December 23, 2009, was formed legally by Decree-Law 104/2004, of May 7th.

On December 23rd, 2009, entered into force Decree-Law 307/2009, establishing the new regime of urban renewal that becomes promoted through the delimitation of those areas. This decree-law was amended and republished by Law 32/2012, of August 14th.

The areas of urban renewal correspond to urban areas that, due to the insufficiency, deterioration or obsolescence of buildings, urban infrastructure, equipment and urban and green spaces for collective use, justify an integrated intervention.

For the intervention areas of urban rehabilitation societies (SRU), established under Decree 104/2004 of May 7th, the same companies act as quality management companies and renewal continues to be framed by programming tools and execution approved in accordance with the Decree-Law 104/2004, May 7th.

Intervention units with strategic document approved under the Decree 104/2004 of May 7th, are also regarded as intervention units regulated by Decree-Law 307/2009 of October 23rd (...)

The Municipal Assembly of Oporto approved the demarcation of Urban Renewal Area of Oporto's Historic Centre in Own Instrument, published in the Official Gazette on July 12th, 2012, under which PORTO VIVO, SRU is named manager of the same, having been delegated the powers referred to in the previous paragraph

⁶⁰ See Notice No. 9562/2012, Porto Municipality, Official Gazette, 2nd Series - No. 134 - July 12th, 2012, page 24702, available at: file:///C:/Users/Utilizador/Documents/UNIVERSIDADE%20PORTUCALENSE/ISABEL%20-%20PROF%20TURISMO/REGULAMENTOS%20-%20CENTRO%20HISTORICO%20DO%20PORTO/Public_ARU_DR.pdf (consulted on: 01.22.2011)

⁶¹ The boundaries of the urban renewal area of the Historic Centre of Oporto are: Rua do Dr. António de Sousa Macedo, Campo dos Mártires da Pátria, Rua S. Filipe de Nery, Rua dos Clérigos, Praça da Liberdade and Rua de 31 de Janeiro (North); Praça da Batalha, Rua de Augusto Rosa, Muralha Fernandina and Ponte Luís I (East); Rio Douro (South); Escadas do Caminho Novo, Rua de Francisco da Rocha Soares and Passeio das Virtudes (West).

for assessment and analysis of urban intervention projects, led those two entities to work together, integrating the Comissão Especial de Avaliação (Special Committee on Assessment) - CEA - since 2012. By 2014 it gathered and produced 441 meetings records as follows: 58 in 2012, 168 in 2013 and 215 in 2014. This CEA is also in charge of the assessment and archaeological intervention in that area through the DRCN representatives. 1754 is the total number of intervention portions of PORTO VIVO, SRU, in CHPPM in 2014. A total of 110 public and private buildings were renewed between the years 2012 and 2014. It also shows that the intervention area represents 49455.09m² after those three years, in a range of 245.18% in 2013 compared to 2012, and 137.16% in 2014 compared to 2013.

3.2 Administrative procedures for offenses committed under urban renewal

The question we posed from the beginning and which answer we seek, is deeply related to the dynamics of urban renewal that CHPPM has being targeted for many years and it has been growing in a cycle of augmentative and sustained gradation. We wanted to know if this dynamic resulted in an increase of violations of legal regulations governing the execution of works.⁶³ It may happen either by attempting to its implementation without authorization, or by the infringement of the specific licenses that have been granted, regardless been authorized by the Municipal Council of Oporto or by PORTO VIVO, SRU.

Among all the necessary dynamics to renewal projects only after 2012⁶⁴ PORTO VIVO, SRU took sole responsibility to supervise, to inspect and to establish administrative processes arising from any detected faults. Until that year, those skills were exclusive of the Inspection Services of Oporto City Council. So, at first, we will analyse the performance of those local authority

⁶² To have a sense of the competences that has the Direção Regional de Cultura do Norte (Regional Northern Culture Management) we visit their website, from where we got the following text that aims to identify them, stating that it "...develops its activity aiming to protect, preserve, restore and communicate - to different kinds of audience - the values of tangible and intangible culture existing in the region. A work in conjunction with the different actors of the territory, such as the central government institutions existing in the region, local authorities, ecclesiastical institutions, educational institutions, associations, among others...". Available at: <http://www.culturanorte.pt/pt/drcn/apresentacao/#sthash.bStzcjMc.dpuf> (consulted on: 01.22.2016).

⁶³ The administrative offense penalty applied is governed by Articles 98 and 99 of the Legal Regime of Urbanization and Construction, published by Decree-Law No. 555/99, of December 16th, the last update was made by Decree Law No. 214-G / 2015, 02/10.

⁶⁴ About the exclusive competence of PORTO VIVO, SRU, see the following statement taken from the site of this entity - Available at: <http://www.portovivosru.pt/pt/area-de-atuacao/enquadramento> - (consulted on: 01.22.2016) "With the approval of the Delimitation of the Renewal of Historic Centre of Oporto Urban Area (ARUCHP) by the Municipal Assembly in June 4th, 2012, and the subsequent publication in the Official Gazette on July 12th, 2012, Porto Vivo, SRU has become the managing body of urban renewal process conducted in the first urban Renewal Area established under Decree-Law 307/2009, October 23rd".

services, but only since 2011. In a second moment we will do a deeper scan of administrative processes arising from the supervision and the inspection of PORTO VIVO, SRU.

3.3 Administrative processes caused by infringements detected by the Inspection Services of Oporto City Council

The following table informs about the administrative offense processes of "Municipal Division of Fiscal Executions and Contraventions of Oporto City Council," caused by infringements verified by this city's Inspection Services. The offenses committed by "natural person" or by the "society" are caused by works that change classified buildings or in process of classification, without administrative leave. It includes transformation of windows to doors, changing the aluminum frames for wood and works within the building without permit. The offenses committed by "natural person" or "society" are caused by modifications either on works of buildings classified or being classified, without administrative leave, or transformation of windows to doors, or changing the aluminum frames for wood or works within the building without charter.

| Year | Processes | Natural Person | Society | Instruction | Condemnatory Decision | Filed |
|-------|-----------|----------------|---------|-------------|-----------------------|-------|
| 2011 | 3 | 2 | 1 | - | 2 | 1 |
| 2012 | 4 | 2 | 2 | - | - | 4 |
| 2013 | 1 | 1 | - | - | - | 1 |
| 2015 | 1 | - | 1 | 1 | - | 1 |
| TOTAL | 9 | 6 | 3 | 1 | 2 | 7 |

Table 1. Summary of Offenses in Oporto – DME

Source: Municipal Division of Tax Enforcement and Administrative Infractions of Oporto City Council – Adapted by Rodrigues, 2016

Table no 1 only shows three administrative processes in 2011 with two condemnatory decisions, both with fines very close to the legal minimum. It also shows a closure decision for having detected the illegitimacy of the offender. If we analyse processes in 2012, out of the four started administrative processes, all of them were filed, confirming the fact that the filing has been decided as a rule based on the incompetence of the supervising agent. Watch out that the

same happened in the years 2013 and 2015, that is in both years one process was started and ended up been filed. Only the proceedings against individuals thrived.

3.4 Administrative processes caused by infringements detected by PORTO VIVO, SRU's Supervision Services

As we have mentioned, the PORTO VIVO, SRU among other skills has exclusive supervision and inspection of the CHPPM rehabilitation works. Table 2 below reflects the number of administrative offense processes that ran terms in that urban rehabilitation company. After been well informed those processes had a final conclusion at the Oporto City Council "Municipal Division of Tax Enforcement and Infringements".⁶⁵ They were usually filed without any condemnatory decision.

| Year | Processes | Natural Person | Society | Instruction | Minimum and Maximum Fines | Condemnatory Decision | Fine | Filed |
|-------|-----------|----------------|---------|-------------|-------------------------------|-----------------------|----------|-------|
| 2012 | 0 | - | - | - | - | - | - | - |
| 2013 | 2 | 2 | - | - | € 500,00 to €200.000,00 | 1 | 652,50 € | 1 |
| 2014 | 2 | 2 | - | - | - | - | - | 2 |
| 2015 | 5 | 2 | 3 | 1 | - | - | - | 4 |
| TOTAL | 9 | 6 | 3 | 1 | - | 1 | - | 7 |

Table 2. Summary of PORTO VIVO Offenses

Source: Municipal Division of Tax Enforcement and Administrative Infractions of Oporto City Council – Adapted by Rodrigues, 2016

Be aware that this table shows only nine administrative processes with sole and only one condemnatory decision that set a fine on the legal minimum threshold. All other decisions have resulted in the filing of the case because it has detected the illegitimacy of the transgressor. These two tables of the processes that ran under the exclusive performance of PORTO VIVO, SRU, show how the interconnection between public and private entities can achieve in a climate of security for all and without mutual fears.

⁶⁵ Pursuant to Paragraph 10, Article 98 of the Legal Regime of Urbanization and Construction, "the power to determine the establishment of administrative offense cases, to designate the instructor and to apply the fines belongs to the mayor, and may be delegated to any of its members." (Emphasis added)

4. A look at Ouro Preto

The relation between the heritage managers at the local level, the civil society and UNESCO represents a *dialectical process of destructive construction*. According to Costa (2011:43) this concept concerns "the prevailing contradiction between preservation and commercialization, the pursuit of democratization and elitism of urban heritage." For the sites that "accept" the title of World Heritage, this relationship goes beyond national borders, subjecting these spaces to the interests of transnational capital.

The year 2003 is emblematic for Ouro Preto. After a series of complaints about the heritage neglect, UNESCO recognises the situation and produces a document named *Motion de preservation d'Ouro Preto* (Motion for Ouro Preto's preservation)" (Costa, 2011). After this action a mission of ICOMOS - International Council on Monuments and Sites - pointed a number of institutional difficulties concerning the management of the historic centre. UNESCO (2003) says that:

The historic centre has kept its homogeneity; however, certain interventions on historical buildings have transformed the original inside space organization. The suburbs urbanization is more problematic, particularly the development found on the hills surrounding the centre, which deforms the original urban landscape, which justifies the enrolment of Ouro Preto on the World Heritage List.

Adds to this situation the fire on Hotel Pilão, located in the central square of Ouro Preto, Praça Tiradentes, occurred on April 15th, 2003, two days after ICOMOS mission have left the city.

According to IPHAN⁶⁶ (2014), 11.5% of Ouro Preto's properties are located in the coverage area of the protected site, which is equivalent to 1,900 properties. For the institution, 17% of the city's population lives in this area. View Figure 2 of Ouro Preto's Inventoried Perimeter.

One must consider that although Ouro Preto was the first Brazilian city to be inventoried back in 1938, it still stands as a challenge to preserve the integrity of its heritage, due to the population's diffuse understanding about the very concept of heritage.

⁶⁶ National and Artistic Heritage Institute

Not even understanding the meaning of the new concept of heritage, the resident proceeded to confuse it with the regulator agent and not with its subject. That is, "heritage" (read IPHAN and its employees) is responsible for not allowing environmental well-being and quality improvements of housing life. Inaccurate and incomprehensible criteria, especially the aesthetic ones, generate regular conflicts between residents and the institutions, exacerbating the challenges of preservation-development dialectics (Villaschi, 2014: 289).



Figure 1. Oporto's Preserved Perimeter

Source: Oporto Municipality

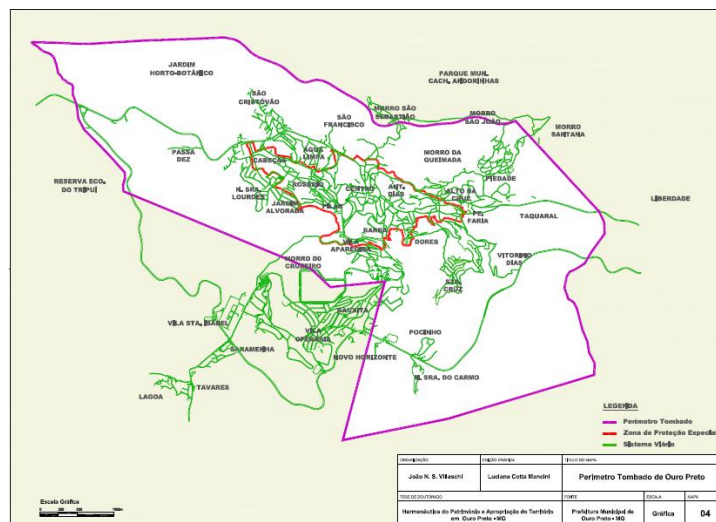


Figure 2. Ouro Preto's Protected Perimeter

Source: Villaschi, 2014

4.1 The MONUMENTA-BID Programme

One of the main interventions that took place in Ouro Preto from 2003 to 2012 was the MONUMENTA-BID programme, designed by the federal government in the late 1990s, in order to streamline the process of preservation of the historical heritage at the Brazilian urban centres under federal protection. Its activities should integrate the restoration of monuments to the training of skilled workers. That programme sought to generate local development conditions and to ensure the maintenance and continuity of actions by local actors themselves. The structure of the actions for each city contemplated was based on the implementation of activities related to cultural tourism, considered the main viable alternative to combine local development and heritage preservation (IPHAN, 2009).

R\$9,997,760.42 (BRL) was invested and distributed in 30 projects (CGU, 2015)⁶⁷. The amount allocated to Ouro Preto was R\$15,100,000.00 (BRL) (IPHAN, 2009). Another 34 private properties have also received programme resources (Costa, 2011). The largest investment was made in Parque Horto dos Contos (Horto dos Contos Park), approximate cost of R\$4,116,978.38 (BRL). With projection of snack bars and amphitheaters constructions, among other facilities, this would be a driving force of tourism activities in Ouro Preto, connecting the bus station to Pilar Minster. The Horto dos Contos Park (or dos Contos Valley) is a green area in the central region of Ouro Preto, considered the largest urban park among historical towns in Brazil. It reveals the most beautiful and unique city views. It would be an Ouro Preto tourist attraction but much of the park is closed for visitors and the open part has many shortcomings for its use as a touristic resource.

In a recent publication, the National General Controllershship Office states that, from the sample set for evaluation, 23.7% of integrated investments were not fully preserved, showing signs of deterioration or lack of maintenance. Among the stated problems, deterioration and structural damage stand out, such as leaks, loss of plaster, destruction of facilities and engineering infrastructure works, as well as damages to the restorations. Furthermore, it was found in 18.42% of the projects evaluated in the sample, that the preservation of the historical heritage benefited by the Monumenta Programme were not carried out according to the technical specifications and/or were not completed within the agreed time. In consequence, risks were detected to the investments already made as well as the enhancement of works and engineering services, which is compromising the effectiveness of the Programme (CGU, 2015).

⁶⁷ National General Controllershship Office

Many tourist facilities have benefited from resources of this programme but no direct investment in the hotel sector was identified.

4.2 Offenses to Ouro Preto's heritage

The data used for the analysis of violations in Ouro Preto is based on the doctoral research conducted in 2013 by Professor Juca Villaschi. These data are the result of a systematic surveying at the IPHAN Regional Office in Ouro Preto. A broader and deeper analysis is in his thesis "Hermenêutica do Patrimônio e Apropriação do Território em Ouro Preto - MG" (Heritage's Hermeneutics and Territory Appropriation in Ouro Preto - MG).⁶⁸

It is worth mentioning that IPHAN, as pointed out by a CGU report, had presented problems that the penalties imposed (fines) were actually paid. To CGU (2007), Articles 13, 15, 16, 17, 18, 19 and 20 of Decree-Law 25/1937 provide application of fines to those who commit the acts described in the standards and are considered offensive to the national heritage. Articles 62 to 65 of Law 9.605/1998, which provides for criminal and administrative sanctions derived from conduct and activities harmful to the environment. In addition to imprisonment or detention it culminates in a fine for those who practise specific law offenses. Moreover, Article 70 of Law 9.605/1998 considers environmental administrative violation "any action or omission that violates the legal rules of use, enjoyment, promotion, protection and restoration of the environment". It can be punished with simple or a daily fine as well as other sanctions (Article 72, sections II and III).

However, because it was published more than 70 years ago, the Decree-Law 25/1937 does not explicitly determined that IPHAN's servers could levy and collect fines contained therein (emphasis added). The Law 9.605/1998 in its Article 70, §1, states that only officials of the Sistema Nacional de Meio Ambiente - SISNAMA (National Environmental System) and port authorities have assignment to draw up notices of environmental violations.

That situation was corrected with the edition of Decree 187/2010, June 11th which sets forth the procedures for calculation of administrative offenses by conduct and activities harmful to the cultural heritage buildings, the imposition of sanctions, the means of defense, the appeal system and the form of collection of debts arising from infringements. Thus, it is believed that almost all of the offenses applied before 2010 were canceled.

⁶⁸ Document available at: <http://www.teses.usp.br/teses/disponiveis/8/8136/tde-07112014-184004/>

| Year | Processes | Residential | Commercial | Instruction | Enforceable Judgement | Filed |
|-------|-----------|-------------|------------|-------------|-----------------------|-------|
| 1999 | 20 | 16 | 4 | - | - | - |
| 2000 | 25 | 11 | 14 | - | - | - |
| 2001 | 25 | 21 | 4 | - | - | - |
| 2002 | 11 | 9 | 2 | - | - | - |
| 2003 | 12 | 6 | 6 | - | - | - |
| 2004 | 4 | 4 | 1 | - | - | - |
| 2005 | 5 | 3 | 2 | - | - | - |
| 2006 | 3 | 1 | 2 | - | - | - |
| 2007 | 3 | 2 | 1 | - | - | - |
| 2008 | 1 | 1 | 0 | - | - | - |
| 2009 | 0 | 0 | 0 | - | - | - |
| 2010 | 2 | 1 | 1 | - | - | - |
| 2011 | 0 | 0 | 0 | - | - | - |
| 2012 | 1 | 1 | 0 | - | - | - |
| 2013 | 1 | 1 | 0 | - | - | - |
| TOTAL | 123 | 86 | 37 | - | - | - |

Table 3. Infraction Notices Issued by IPHAN

Source: Villaschi, 2014 – Adapted by Burkowski, 2016

Table 3 above shows a significant decrease in the number of offenses reported by IPHAN to the public prosecutor. It was not possible to identify the number of requests for intervention in that period, but some hypotheses can be raised for future studies. The first one is the population perception regarding the police power assigned to IPHAN. As a result of Decree 187/2010, mentioned above, the data suggests that the population has become more attentive and apprehensive concerning the sanctions imposed by the heritage managers. Another hypothesis points that technical guidance and, above all, educational activities developed by IPHAN and other institutions linked to the cultural heritage, could be producing changes in the relationship state x society concerning reforms and new buildings inside the extensive protected territory. Finally, a third hypothesis is that IPHAN's insufficient human and financial resources compromises its capacity to monitor the various urban interventions.

5. Final Considerations

This comparative study allows us to consider that Portugal and Brazil have developed a legislation and have structured public entities to protect the integrity of their cultural heritage. These initiatives by the state maintain the World Heritage title awarded by UNESCO to Oporto's historic centre and to the city of Ouro Preto, thus ensuring the permanence of the historical urban landscape. Both countries have integrated their legislation in order to control the changes in buildings of historical value, and have also set penalties for offenses that may be committed. 48 years separate the issue of specific legislation in Brazil and Portugal, to protect their historical sites. However it did not mean adequate control over the mischaracterization of the Brazilian cultural asset. One hypothesis is about the delay for the heritage matter to become relevant and for its public policy to be proposed in Brazil. In any case, the laws of both countries set the right to culture as a fundamental citizens' right, which attaches to the state the duty to guarantee it.

The sample obtained from Portugal's public authorities has concluded that the CHPPM have rehabilitated 110 buildings between 2012 and 2014. In Brazil it was not possible to obtain data on the interventions in Ouro Preto's properties, which reveals a certain opacity of the public power. For the control of the offenses occurred in both countries, PORTO VIVO, SRU, has processed nine administrative offense cases between the years 2012-2015. Over those processes only one fine of the legal minimum was imposed, which shows a state performance of prevention rather than repression. In turn, in Brazil IPHAN has considerably reduced the number of administrative offense cases from 1999 to 2011, but all infractions were canceled. Both in 2012 as in 2013 IPHAN started only one process, which it was not possible to detect the outcome.

This comparative study shows that public authorities responsible for safeguarding the two countries assets work close the population and strive to ensure the maintenance of both cities World Heritage title. However there are important differences to consider. The largest PORTO VIVO, SRU's proximity to the CHPPM than the Regional Office of IPHAN to Ouro Preto city, for instance, shows different level of effectiveness. The differences of performance scales are also significant. Another point to consider is the limited IPHAN's acting capacity, given the reduced number of its staff and financial resources, only offset by continued educational activities for the community. It's also very important to consider the superficial knowledge about Ouro Preto's history among the population, especially natives, and therefore the non-recognition of its heritage value. In the case of Ouro Preto, new social demands and the lack of clear criteria for approval of architectural and urban interventions projects, stimulate residents to act as a potential heritage's predator.

Beyond the rigor of the law, the types of coping contradictions between economic development, tourism climb and heritage preservation, strongly incited by globalization processes, set the materialization of different evolutionary processes in both countries.

This article did not specifically compare the modalities of appropriation and use of Ouro Preto's and Oporto's territory which should occur in future studies.

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