

Council of State: green light for seismic amnesty

The Council of State, in its ruling 22 April 2024 no. 3645, recognises the legitimacy of seismic amnesty.

Procedures for the regularisation of structural violations are not regulated by the Testo Unico Edilizia (Presidential Decree 6 June 2001 no. 380); the latter, in fact, merely sets out the prerequisites, effects and terms of the regularisation procedure with exclusive reference to building and town planning profiles (see articles 36 and 37, Presidential Decree no. 380/2001). The only provision that, in the T.U.E., addresses the issue of works carried out without prior authorisation/deposit with the Civil Engineers' Offices is the third paragraph of article 98 which, in regulating the criminal proceedings, provides for the possibility for the Judge to order the demolition or to issue "the prescriptions necessary to make the works compliant with the regulations", thus authorising the maintenance of the work, even in the absence of the prior act of consent pursuant to articles 93-94 T.U.E.

In spite of this, the issue of the compatibility of the discipline relating to ascertainment of conformity and compliance with anti-seismic regulations assumes a rather important role in practice, given that it is frequent, within the scope of application of art. 36 of the T.U.E., to have to regularise not only urban-building deficiencies in the strict sense but also those relating to seismic authorisations.

This is a particularly complex and delicate issue, especially in a territory – like ours – notoriously characterised by the extension of seismically vulnerable zones.

The issue was recently put before the Council of State, called upon to decide on the possible configuration of seismic authorisation in amnesty within our legal system.

On this point, in the silence of the law, there is, however, a non-univocal orientation by case law.

In the judgement 1 March 2021 no. 1347, Section VIII of T.A.R. Campania – Naples ruled that *"in the absence of specific positive regulations on seismic authorisations for amnesty, the risk of introducing a sort of jurisprudential amnesty based on the posthumous ascertainment of the conformity of the work in any case built with the technical standards for construction in seismic areas at the time of the request must be avoided in a matter that is so important for the safety of persons"*.

In other words, given that Presidential Decree no. 380/01 does not contemplate the amnesty of the declaration of commencement of works or the seismic authorisation, the legal system does not allow for particular solutions

and procedures for the amnesty of the structural profile.

Such arguments were also shared by the Court of Cassation which, in its sentence 13 April 2023 no. 18267, noted the absence of a form of amnesty or posthumous seismic authorisation for interventions carried out without a title, reiterating that compliance with the requirement of double conformity is to be considered excluded in the case of constructions carried out without the prior obtainment of seismic authorisation.

However, there had been some rulings by the administrative Courts which, albeit indirectly, had always assumed the existence of structural or seismic amnesty (see T.A.R. Lazio - Rome, Sec. II-bis, 7 May 2021 no. 5389; T.A.R. Campania - Naples, Sec. VIII, 21 October 2020 no. 4647).

This seems justified also in light of the Constitutional Court's opinion, according to which *"the rule of double conformity also applies to anti-seismic regulations, constituting, for interventions in seismic areas, a fundamental principle of the subjects "government of the territory" and "civil protection" (Constitutional Court, judgment 20 January 2021 no. 2)*.

The judgment under comment is in line with the latter orientation.

According to the Council of State, *"denying in toto the admissibility of a posthumous seismic authorisation, since the extent of the territory subject to the relative protection in Italy is a known consideration, there would be a risk of arriving at a sort of interpretatio abrogans of art. 36 of the T.U.E. that would be difficult to use"* (Council of State, no. 3645/2024).

In concrete terms, the lack of a prior seismic permit does not necessarily result in a rejection of the application for amnesty pursuant to Article 36, if the party demonstrates that it can obtain it and that it has actually requested it, albeit posthumously.

The regularisation of structural abuses is therefore admissible, provided that the criterion of double conformity is observed and therefore the technical standards for constructions in seismic areas in force both at the time of regularisation and at the time of the abuse are complied with.

On the other hand, as mentioned above, considering that art. 98, paragraph 3 of the Testo Unico Edilizia allows the criminal judge to impose, in lieu of the demolition of works or parts of them built in breach of seismic regulations, the prescriptions necessary to make the works compliant with such regulations, it is not clear why the Administration can deny the admissibility of an *ex post* seismic report.

Pending the hoped-for reform of this matter, it seems appropriate to note that precise provisions on the procedure for seismic amnesty are lacking.

On this point, the judges of the Palazzo Spada suggest – while waiting for the clarifying intervention of the national legislature – to follow the rules laid down by the T.U.E. to obtain the so-called ordinary seismic authorisation.

On the basis of this authoritative pronouncement, the road to obtaining seismic authorisation in amnesty is opened (hopefully, definitively): now, we have

only to discover how the Regions and the various Civil Engineers' Offices will behave, which, until now, had often followed a rather different *modus operandi* throughout the country.

The Firm will closely follow the upcoming developments, remaining at your disposal for any needs.

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