

**ABUSES IN AREAS SUBJECT TO CONSTRAINTS: BETWEEN  
LANDSCAPE COMPATIBILITY AND NOTION OF USABLE SURFACE AREA**

Note to T.A.R. Sicilia-Catania, Sec. III, 27 November 2024 no. 3942

A recent ruling by the Regional Administrative Tribunal of Sicily-Catania returns to the notion of “usable surface area” (*superficie utile*) in the presence of a landscape constraint and, in general, on the type of building abuses in areas subject to constraints, which may be subject to amnesty.

In the case at issue, the plaintiff had carried out an unauthorised work, consisting in the construction of an appurtenance (*pertinenza*) on the external courtyard of the pre-existing building, used as a laundry and storeroom, in the exclusive and necessary service of the main dwelling.

In light of the extraordinary amnesty procedure introduced by article 32 of decree-law 30 September 2003 no. 269, converted with amendments by law 24 November 2003 no. 326 (the so-called “third building amnesty”), in order to regularise the work carried out *sine titulo*, the person concerned applied for a building amnesty.

That application was subsequently rejected by the Messina Department of Cultural and Environmental Heritage.

The Regional Administrative Court of Sicily-Catania, called upon to rule on the legitimacy of the contested measure – while partially upholding the appeal in the part in which the Superintendency's measure orders the restoration of the state of the sites (which, it should be noted, can only be imposed by the municipal administration, the only authority in charge of the procedure) – confirmed what has been established by administrative jurisprudence in terms of the non-permitting of works involving new volumes or surfaces in areas subject to landscape restrictions.

In particular, it was reiterated that in the context of landscape constrained territories,

the amnesty of any new volume, even of a technical nature, or of any surface area is precluded.

On this point, even though Article 167, paragraph 4, letter a) of Legislative Decree no. 42 of 22 January 2004 unequivocally states that a landscape authorisation in amnesty cannot be issued in relation to works that have resulted in the creation of useful surfaces or volumes or an increase in those legitimately realised. Faced with a rather generic legislative definition of usable surface area, it was the Administrative Judge who clarified its scope.

As reiterated by the Catanese Judge, the notion of “usable surface area” must be understood in a broad and finalistic sense, i.e. not limited to enclosed spaces or interventions capable of causing an increase in the urban load (*carico urbanistico*), but rather taking care to consider “*any building work that can be walked on or that can be exploited for any use*” (T.A.R. Sicilia-Catania, no. 3942/2024, point 10.3).

There was, therefore, no reason to disregard the granitic jurisprudence according to which all works carried out on the area subject to a constraint have undoubted landscape relevance, even if they are technical volumes or a possible appurtenance, since the protection requirements of the area subject to a landscape constraint may also require the unalterability of the state of the sites (*ex multis*, see Council of State, Sec. VI, 14 November 2022 no. 9950; Council of State, Sec. II, 4 March 2019 no. 358).

On the basis of the above hermeneutic coordinates, it was previously held, for example, that the lowering of the floor slab with a simultaneous increase in the internal heights of an attic room (*sottotetto*), made habitable, is to be considered an absolutely non-marginal variation of surface area (Council of State, Section VI, 21 July 2020 no. 4661); while, at the same time, according to the Supreme Council, the creation of a balcony would not constitute a creation of usable surface area (Council of State, Section VI, 17 March 2022 no. 1932).

Therefore, the judgment in comment unequivocally confirms the consolidation of administrative jurisprudence on the topic of the assessment of landscape compatibility and the creation or increase of usable surfaces or volumes.

An orientation that, undoubtedly, is particularly rigid but that is unlikely to be challenged, since – as the Constitutional Court has also ruled on several occasions (most recently, see judgment 22 November 2022 no. 252) – it is now common ground that only minor building works such as restoration, conservative restoration, extraordinary maintenance and, in general, works that do not entail new volumes or surface areas may be deemed sanctionable in areas subject to specific constraints.

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