



### **RESIDENTIAL RENOVATION OF ATTICS: BETWEEN CONSOLIDATED CASE LAW AND THE SALVA CASA DECREE**

The residential renovation of existing attics (*sottotetti*) has always been a topic of considerable interest.

The various guidelines emanating from regional provisions, from the interventions of administrative case law and, most recently, from the provisions of Decree-Law 29 May 2024 no. 69 (so-called *Salva Casa*) lead to the belief that, before starting a building intervention aimed at the volumetric recovery of attics, it is prudent to acquire a cognitive framework that is as complete and exhaustive as possible.

Regulatory provisions that – as jurisprudence teaches – are often not adequately taken into consideration are those, as recalled by the Second Section of the Council of State in judgement 21 November 2024 no. 9371, concerning the minimum distance between buildings pursuant to Ministerial Decree 2 April 1968 no. 1444.

In the case at issue, the appellant appealed against the judgment of the Regional Administrative Tribunal of Campania-Salerno 4 February 2014 no. 323, claiming that, contrary to the first instance judge's finding, the opposing parties (owners of a building in close proximity) had built, on the attic, a volumetric extension intended to create new living spaces, with related extension of the building outside the original shape.

Specifically, the appellant argued that this intervention was in breach of the mandatory regulations on distances between buildings, since what had been carried out did not respect either the ten-metre distance under Article 9 of the aforementioned decree nor the three-metre distance set by the Civil Code.

Following a verification (*verificazione*) ordered, pursuant to Article 66 of the code of administrative trial, to ascertain the state of the premises and once it was ascertained that the distances from the windows on the wall of the next building had been violated, the judges of Palazzo Spada upheld the appeal and, as a result,

reforming the contested sentence, cancelled the building permit issued by the municipal Administration.

As reiterated by the Supreme Court, distances between buildings must be respected *"regardless of whether or not the rooms obtained by recovering the attic are residential"* (Council of State, no. 9371/2024, point 7.8).

This is also in the light of the well-established case law according to which the minimum distance between buildings is peremptorily imposed by the legislator for any form of new construction; the latter is to be understood *"in the broadest sense with regard to both the new construction regime (id est, new buildings; extensions, superelevations, volumetric additions, surface area), as well as the reconstructive regime (id est, demolition and reconstruction, in whole or in part, of buildings, shifting of volumes and site area; changes to the outline, even with the same volume, planivolumetric changes)"* (ex multis, see Council of State, Sec. IV, 17 May 2023 no. 4933).

On this point, since they are mandatory prescriptions, no different determination can be made by municipal Administrations, which cannot therefore regulate building activities in contrast with the regulations on minimum distances between buildings.

However, it seems appropriate to point out that the consolidated case law on the subject of the renovation of attics and distances between buildings must now be reconciled with the changes introduced by the aforementioned Salva Casa Decree, which – in order to encourage the expansion of the housing offer by limiting the consumption of new land – has also intervened on the provision contained in Article 2-bis of the *Testo Unico Edilizia*, concerning exceptions of distance limits between buildings.

In detail, the new paragraph 1-*quater* provides that interventions for the renovation of attics are in any case allowed, within the limits and according to the procedures provided for by regional law, **even when the renovation intervention does not allow compliance with the minimum distances between buildings and from the boundaries**, provided that: **(i)** the distance limits in force at the time the building was constructed are complied with; **(ii)** no changes are made to the shape and surface area of the attic area as delimited by the perimeter walls; **(iii)** the maximum height of the building authorised by the title that provided for its construction is complied with. However, the provisions of more favourable regional laws remain unaffected.

It therefore remains to be seen how the new provisions will be implemented by the Administrative Judge.

The law firm will closely follow the next steps, remaining at your disposal for any needs.

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