

CONTESTING EXPROPRIATIVE ACTS: PAY ATTENTION TO TIMING

The TAR-Lombardy, Milan, with ruling no. 3632/2024 published on 13 December 2024, returns to the topic of expropriation procedures, recalling its rulings of last summer on the same subject.

It is important here to point out a principle with a significant impact on the challenge of the mentioned procedures. Often, in fact, it is decided to initiate legal action downstream of the procedure, criticising the final determination also due to the defects of the previous and prerequisite acts.

Therefore, beyond the peculiarities of the case – concerning the construction of an infrastructure of strategic interest and the application of the previous Legislative Decree no. 163/2006 – it is interesting to underline here the reasons why the appeal is considered partly tardive and partly inadmissible.

The judges highlight that the public utility declaration and the approval of the final project *"should have been promptly contested, as they are immediately detrimental acts"*. Consequently, *"the expiry of the term for challenging the presupposed acts (...) cannot be 'recovered', with consequent resumption of the deadlines, through the challenge (even if timely) of the emergency occupation decree, deducing the illegitimacy of the latter also for derivative illegitimacy defects"*.

For this reason, the part of the appeals aimed at cancelling the mentioned provisions is considered inadmissible by the judges for tardiness; but also the part aimed at cancelling the final provision for reasons related to the former is considered inadmissible, *"given that the mentioned prerequisite acts became unassailable"*.

The clarification of the judges has fundamental importance and must consequently guide the **operators to act promptly to detect any legitimacy defects in the procedure, starting from the first preparatory measures for the final expropriation**, in order to avoid deleterious forfeiture.

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