

A PRECISE IDENTIFICATION OF THE SO-CALLED VEPA

The TAR–Reggio Emilia, Parma, with the ruling of 10 December 2024 no. 373, provides a renewed clarification regarding the construction and installation of removable and totally transparent panoramic windows, the so-called VEPA, considered free building activities pursuant to art. 6 paragraph 1 letter b-*bis*) of the Presidential Decree of 6 June 2001, no. 380.

The fact

The specific case concerns the construction of some extendable and closeable windows, which, positioned before the perimeter railing, delimit the terraces of two apartments. The municipality, considering the works carried out to be classified as new construction *"since the closure with "windows" of a cantilevered balcony would determine an increase in volume, as it emerges from the outline of the existing building"*, imposes a pecuniary sanction and orders the demolition of the works considered illegal and the restoration of the places.

Before seeing the solution of the herein analysed sentence, it is useful to report the specific description of the works: *"along the entire length of the balcony, the presence of a structure consisting of 12 glass panels with dimensions equal to 40 cm base x 294 cm height approximately, installed at the edge of the balcony inside the railing and by means of metal guides anchored at the bottom on the flooring and in the upper part to the upper balcony. On the same balcony, a glass partition is installed transversally, which divides it into two parts, making the two real estate units communicating with each other through a door. In the inspected part, the linear development of the structure is equal to a length of 3.20 m, corresponding to 8 glass modules separated from each other by a small plastic dividing partition. On one of the glass panels a small manual fan is installed for air exchange"*.

The solution

Evoking the Council of State case law, the TAR concludes that the contested municipal ordinances are unlawful. In fact, unlike the case of the construction of a veranda, the glass panels only create a precarious delimitation of the balcony, lacking of fixity, stability and permanence, so that they do not create any permanently configured closed space and do not emerge from the outline of the building; that is why it cannot be considered a building organism characterised by the creation of a new volume or surface, and therefore can be included in the free building interventions as per art. 6, paragraph 1, letter b-*bis*) of the Presidential Decree of 6 June 2001, no. 380.

In particular, it is stated that in order to configure a so-called VEPA, *"from a technical structural point of view, it is necessary that: a) the main work consists of the "panoramic glass", as an protection element from the sun and atmospheric agents, aimed at a better use of the external space; b) the structure is a merely*

accessory element with respect to the glass, necessary for its support; c) the panels constituting the glass are not only easily removable but also completely retractable, lacking of fixity, stability and permanence so as to create a closed space, permanently configured that can alter the shape and the facade of the building (see, on the specific issue of the so-called pergolas, Council of State, section II, 6 June 2023 no. 5567)".

Therefore, the use of panoramic windows does not involve the creation of a new volume when it is carried out for the sole purpose of temporary protection from atmospheric agents, reduction of heat loss and achievement of greater liveability conditions in an external space, it keeps this nature and function and, therefore, it is not transformed into a potentially habitable closed room.

The Judge also considered the positioning of a sink with taps, a washing machine, various pieces of furniture and drying racks in the balcony to be irrelevant, since what really matter is only the configuration of "*a permanently closed space with consequent variation in the volume and the surface area*", while these latter elements represent a mere "*choice of the furnishing components of the balcony, (...) possibly assessable for its compliance with the condominium regulations*".

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2

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