FROM WAREHOUSE TO PRIVATE OFFICES: THE COUNCIL OF STATE CONFIRMS THE OBLIGATION TO DELIVER AREAS TO BE INTENDED FOR PUBLIC SERVICES

Our law firm provided judicial assistance in favor of a Lombard Municipality in a proceeding brought by an economic operator before the Council of State, Section IV, which issued its judgment no. 2414 on 24 March 2025.

The case concerned a building renovation intervention, carried out through a certified notice of commencement of activity (SCIA), entailing the redevelopment of a warehouse originally intended for industrial use into private offices.

Namely, the dispute revolved around the obligation to deliver areas to be intended for public use in favor of the Municipality.

The economic operator challenged the Municipality's request for a payment in lieu of the assignment of such areas, alleging infringement of the principle of liberalization of changes of use within the "productive and office" categories referred to in article 23-ter, paragraph 1, letter b), of Presidential Decree no. 380/2001. Namely, the complainant argued that, in this case, the change of use did not entail a significant urban planning modification and, therefore, no public areas or compensatory payments were due.

The Regional Administrative Court of Lombardy, Milan, Section II, with its judgment no. 2009 of 7 August 2023, rejected the complaint and confirmed the economic operator's obligation to plan for and allocate sufficient sites to deliver public services or, alternatively, to pay a corresponding fee, pursuant to article 51, paragraph 1, of Regional Law no. 12/2005 and article 23-ter of Presidential Decree no. 380/2001.

The Council of State upheld the first-instance decision and stated that the exemption from the obligation to provide for public areas under article 51, paragraph 1, of Regional Law 12/2005, does not apply to the intended uses that are explicitly excluded by the Municipality's urban development plan (the so-called "PGT"). Moreover, the Court recognized that local authorities are endowed with broad discretionary power in determining whether public areas intended for public use shall be delivered or not, with respect to the allocated use, to ensure an adequate provision of public services.

The PGT technical implementation rule that stated the obligation to provide for areas intended for public services in the event of a change of use within the same category was not deemed by the Court as an infringment of article 51, paragraph 1, of Regional Law no. 12/2005, which allows Municipalities to maintain such an obligation.

Furthermore, the Court stated that the Municipality's request did not disclose a

violation of article 23-ter of Presidential Decree no. 380/2001, as the provision, while allowing free allocation of uses within the same functional category, allows regional laws to impose more restrictive requirements.

Finally, the Council of State highlighted the need to distinguish between the obligation to deliver areas intended for public use in the case of a change of use and the zoning charges due when redevelopment projects are carried out. The circumstance that zoning fees had been duly paid by the economic operator did not exempt it from the obligation to deliver areas to be intended for public services, as these are distinct issues.

Conclusions

In conclusion, the Council of State established that the mere homogeneity of the intended uses does not automatically exclude the existence of typological peculiarities that, in specific cases, could justify the need to allocate areas to be intended for public services.

Therefore, the municipal technical implementation rule that allows intra-functional changes of use within an urbanized context, but still subjects those interventions to the delivery of such areas, is legitimate. This aligns with the principle of local government autonomy in urban planning decisions, as stated by article 23-ter, paragraph 1-bis, of Presidential Decree no. 380/2001.

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