

SALVA-CASA AND BUILDING TOLERANCES: AMNESTY MEASURES SHALL NOT BE APPLIED RETROACTIVELY WHERE ADMINISTRATIVE MEASURES HAVE ALREADY BEEN ADOPTED

On 2 April 2025, the Council of State issued its judgment in case No. 2771. The Court stated that the new amnesty thresholds for building tolerances – set forth by Law by decree No. 69/2024 (commonly referred to as "*Salva-Casa* Decree"), which amended article 34-*bis* of Presidential Decree No. 380/2001 – are not applicable to legal situations already settled by municipal measures previously adopted.

The legislative amendment – as is well known – established that minor discrepancies from building parameters must not be deemed as legal infringements, provided that such discrepancies are limited within fixed percentages (ranging from 2% to 6%), depending on the usable floor area of the building, and the relative interventions are carried out no later than 24 May 2024.

The present case

In the present case examined by the Council of State, the dispute concerned the construction, in 1970, of a walkway of approximately 4 square metres connecting two adjacent apartments.

In 2017, the Municipality adopted a measure to archive the demolition proceedings of said walkway, qualifying the construction as an executive tolerance falling within the 2% tolerance threshold.

The owner of the underlying property filed a complaint before the Regional Administrative Court (T.A.R.) of Campania – Salerno, demanding the annulment of the municipal measure. The T.A.R. upheld the complaint, on the ground that the intervention was not included within the scope of the regulatory framework on construction tolerances.

An appeal was subsequently filed on the assumption that, on the contrary, the volumetric increase complied with the tolerance limits set forth by the law in force at the time the municipal measure was issued.

The Solution

The Council of State upheld the T.A.R. decision, explaining that the new provisions set forth by the "*Salva-Casa* Decree", albeit potentially favourable in the present case, could not be applied retroactively, in presence of an administrative decision adopted prior to their entry into force.

In other words, pursuant to the *tempus regit actum* rule, the lawfulness of an administrative measure must be assessed on the basis of the factual and legal framework in force at the time of its adoption. Therefore, any retroactive application of the amnesty measures introduced by the "*Salva-casa* Decree" is not allowed.

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