

## **TORRE MILANO: THE REGIONAL ADMINISTRATIVE COURT REJECTS THE COMPLAINT FILED BY NEIGHBOURING OWNERS**

### **The case at hand**

The case concerns a complaint lodged by the owner of a property located opposite a new twenty-four-storey residential building, built twenty-four-storey residential tower, constructed in replacement of a former single-storey industrial building previously intended as a public office. The intervention had been authorised by means of a Certified Notice of Commencement of Works (SCIA) filed as an alternative to a building permit. The complainant, believing that the intervention harmed her interests as the owner of the opposing property, filed a request for verification under Article 19(6) of Law No. 241/1990, asking the Municipality to exercise its supervisory powers pursuant to Article 27 of Presidential Decree No. 380/2001. Moreover, a request to access to the related administrative documents was submitted. Following the negative reply issued by the Municipality of Milan, she brought a complaint before the Regional Administrative Tribunal (TAR) for Lombardy – Milan Section. After obtaining access to the documents, she later submitted additional grounds of complaint, raising further objections concerning the alleged unlawfulness of the works authorised through the above-mentioned SCIA.

### **The alleged unlawful aspects identified by the complainant**

The complainant, claiming an interest in preserving the view, air, and light of her property, challenged several allegedly unlawful aspects of the SCIA. Namely, she claimed an inconsistency between the volumetric capacity of the existing building and that of the project, alleging that the intervention breached the building index applicable to new constructions, or exceeded the existing volume if considered a redevelopment. She also contested the private technical report by virtue of which the pre-existing volume was certified, deeming it inadequate to demonstrate the actual existing building condition. Furthermore, she contested a violation of a morphological rule set out in the Technical Implementation Rules (NTA) of the “Piano delle Regole” (Rules Plan) of the Milan Town Planning Scheme (PGT). It was argued that the twenty-four-storey tower was out of scale and inconsistent with the surrounding urban fabric, thereby affecting the area’s morphology, traffic circulation, and parking availability.

### **The decision of the Regional Administrative Court**

The TAR rejected all grounds of complaint. It first noted that the technical report was correctly based on the building permits held by the Municipality. The court also found that its evidentiary value was confirmed by Director’s Decision No. 112/2018. Since this decision had not been challenged, the claim was deemed inadmissible for lack of interest in bringing an action. As for the alleged breach of the morphological

rules, the TAR held that the project could depart from the PGT's prescriptions if a favourable opinion was obtained from the Landscape Commission. In this case, that opinion had been properly issued through the specific sub-procedure set out in Article 40 of the Building Regulations. Such opinion, as an expression of technical discretion, is subject to judicial review only in cases of manifest unreasonableness, factual misrepresentation or evident abnormality, none of which were detected in the present case by the Court. The TAR further clarified that it is inherent to the functioning of collegial bodies that their opinions may be adopted despite dissenting votes - as occurred in this case -, without this circumstance being, in itself, a sign of illegality.

The TAR then addressed the additional grounds of complaint introduced for the first time in the judicial proceedings. The Court referred to Article 19, paragraph 6-ter, of Law No. 241/1990, which explicitly provides that the SCIA could not be deemed as an autonomous administrative measure. Therefore, it cannot be directly challenged in a judicial proceedings. A SCIA can be duly challenged only after the Administration has exercised its supervisory powers and a final decision has been issued as a result of that process.

The verification duty set forth by Article 19, paragraph 6-ter, applies only to the specific irregularities reported by the claimant, provided that they relate to breaches of rules safeguarding public interests in building and planning matters and affect a qualified legitimate interest attributable to the claimant. In other words, the claim issued under Article 19, paragraph 6-ter, cannot amount to a generalised review of the building activity, whose compliance with the law is presumed once the thirty-day period for the ordinary exercise of supervisory powers has expired.

It follows that, in proceedings brought against the municipal decision responding to the claim, only the alleged unlawful aspects already raised in the initial submission may be invoked, since the Municipality exercised its powers exclusively with respect to those matters. In this regard, the TAR also recalled Article 34 of Legislative Decree No. 104/2010, which prohibits the administrative judge from ruling on powers not yet exercised by the Administration. Consequently, objections to a SCIA raised for the first time in a judicial complaint, without a prior supplement to the initial administrative claim, cannot be examined. This is because the Municipality did not have the opportunity to exercise its supervisory powers within the proper administrative procedure.

## **Conclusions**

The decision reaffirms a principle of systemic importance: a SCIA cannot be challenged directly, and any claim concerning its lawfulness must first be submitted through a formal request for verification under Article 19 of Law No. 241/1990. Only the final decision adopted by the Municipality in response to that request may be subject to judicial review, for the protection of qualified legitimate interests and solely in relation to the grounds of unlawfulness previously raised in the administrative phase. Accordingly, challenges brought for the first time before the courts are inadmissible, as they seek to contest aspects of the SCIA that can no longer be reviewed, given that its effects have become final upon expiry of the thirty-day period for the ordinary exercise of supervisory powers by the

Administration.

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