

LAND USE CONSTRAINTS ARISING FROM URBAN PLANNING AGREEMENTS: THE PRINCIPLE OF NON-EXTINCTION OF THE AGREEMENT

On 13th August 2026, the Lombardy Regional Administrative Court - Milan (T.A.R. Milano) issued judgment no. 4097, addressing the question concerning the **legal nature of and use constraints arising from urban planning agreements**. The matter at hand was placed at the centre of a dispute between two divergent interpretations: the private-law interpretation supporting the extinction of contractual obligations, and the public-law interpretation supporting the permanence of restrictive regulation. The judgment of the Milan court provided an answer to this question, touching the heart of the debate regarding property rights shaped by urban planning agreements.

1. Factual background

The case concerned the transfer of land designated primarily for the construction of a place of worship and other facilities of general public interest managed by religious institutions. Following the completion of the principal building, the plaintiff sought to have the municipality assign uses of private interest to the portion of land not occupied by the place of worship. The municipal administration, considering the contractual land use constraint to remain in force, issued a decision of denial.

The property owner thus challenged the decision, contesting the persistence of the land use constraint on the unoccupied surface and requesting a declaration that the original obligation had been extinguished and that the land use constraint had lapsed.

In particular, the plaintiff, proceeding from the premise that urban planning agreements are public law agreements governed by Article 11 of Law No. 241/1990, contended that interpretation of the agreement in accordance with the criteria set out in Article 1362 of the Italian Civil Code should lead to the conclusion that, as regards the portion of land not occupied by the church, the land use constraint should have lapsed following the construction of the latter, since the intention of the parties could only have been to treat the constraint as an instrument for realizing the place of worship, rather than as a permanent burden on the entire area.

Furthermore, the conduct adopted by the municipal administration subsequent to the construction of the church - consisting in the adoption of planning decisions and the issuance of building permits incompatible with the urban planning land use constraint - would have generated a legitimate expectation that was violated by the adoption of the contested decision.

The plaintiff further contested the assertion contained in the decision under challenge that favorable transfer prices would be a qualifying element of the land use constraint, arguing that the municipal executive resolution used to determine the price of the land provided for a reduction only for already urbanized areas, and not for areas lacking public infrastructure, such as the land in question.

Finally, the plaintiff invoked the violation of Article 1 of the First Protocol to the European Convention on Human Rights and Articles 832 and 834 of the Italian Civil Code, protecting property rights, resulting from the perpetual maintenance of a land use constraint in the absence of any appreciable public interest.

2. The Court's decision

The Regional Administrative Court dismissed the complainant's arguments on the basis of several grounds.

First, the Court recalled the text of the urban planning agreement attached to the deed of transfer of the land in dispute, which in Article 1 provides that *"the Organization (...) hereby undertakes to give effect to the master plan as regards the construction of a new parish church and related institutions in the vicinity of the town of Cimiano (...)"*. Article 2 of the same agreement further provides that, in order to permit the realization of the aforementioned works, *"the Municipality of M. undertakes to transfer in ownership to the Organization (...) the hereinafter described land which, according to the provisions of the aforementioned urban plan, is designated for the construction of the new parish church of the district and related institutions, land indicated in pink on the plan attached hereto as Annex A) (...) with an area of approximately 14,500 square meters, being part of cadastral lots nos. (...) – (...) – (...) of the cadastral map of Milan, Crescenzago section."* The same article, moreover, links the determination of the price of the land to the application of a municipal executive resolution.

Accordingly, the Court observed, from the reading of the urban planning agreement it clearly emerges that the same is referable to the entire land transferred, and not merely to the portion on which the church was constructed. Indeed, the General Town Plan (Piano Regolatore Generale) in force *ratione temporis* had provided, with regard to the land at issue, not only for the parish church, but also for works designed to provide services of general public interest managed by religious institutions. From this, as the Court noted, *"(...) it follows that the public interest underlying the transfer of the land, as it was intended to give effect to the provisions of the General Town Plan, did not concern only the realization of the parish church, but also the realization of ecclesiastical centers for healthcare and culture, which may include schools and buildings designed for residential services managed by religious institutions."*

The existence of public interest in the transfer of the entire area, according to the Court, is also derived from the fact that the transfer itself took place by applying the prices established by the municipal executive resolution, whose reductions, contrary to what the plaintiff argued, apply both to already urbanized areas and to those lacking public infrastructure.

The judges emphasized the provision in the aforementioned resolution providing that, for all areas designated for purposes of public interest and therefore alienated at favorable prices -whether already urbanized or lacking public infrastructure - a specific permanent land use constraint should have been included within the contract of transfer.

On the basis of these premises, the Court observed that: (i) the land was transferred for reasons of public interest; (ii) the transfer took place at the favorable price established by the municipal executive resolution; (iii) as provided by the resolution, the urban planning agreement and the transfer contract provided for a permanent land use constraint for religious purposes with respect to the entire transferred land.

Accordingly, the judgment rejected the plaintiff's argument in favor of the lapse of the land use constraint following the construction of the church. Indeed, the constraint applies to the entire area and not merely to the portion occupied by the place of worship, and is teleologically intended to permit the establishment of other structures of public interest connected to religious activity. The circumstance that the church has been constructed, therefore, cannot in any way neutralize the public interest in the maintenance of such other structures, nor suppress the land use constraint.

The judges then offered a clarification intended to exclude any risk of excessive formalism: the land use constraint persists, but need not be maintained in perpetuity. Indeed, the municipality may reformulate the regulatory regime through a new planning instrument, should it verify a change in public interest. In this manner the Court dispelled the concern regarding the creation of a perpetual land use constraint: this is not a question of absolute permanence, but rather of permanence conditional upon public interest.

Finally, the Court rejected the complaints regarding the violation of legitimate expectations, observing that planning decisions cannot generate expectations toward private uses.

3. Concluding remarks

The judgment provides an important contribution to the case law on urban planning agreements and the duration of land use constraints. In particular, the decision establishes the principle that the performance of the principal obligation undertaken by the private party through the urban planning agreement produces no extinguishing effect upon the land use constraint burdening the transferred land. To reach this conclusion, the Regional Administrative Court qualified the land use constraint not as a limitation, but rather as a conforming of property rights to their social function, as provided by Article 42 of the Italian Constitution. Proceeding from this premise, the judges came to the following conclusion: the land use constraint finds its *raison d'être* in the function of public interest that planning regulations express with regard to the entire area, rather than to individual works. In other words: even where the agreed works have been executed, the land use constraint persists as long as it is sustained by public interest.

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