

THE EXPULSION EFFECT IN URBAN PLANNING: AN OBJECTIVE READING MUST BE GIVEN

The T.A.R. Lombardia-Milan, section III, with the ruling of 27 January 2025 no. 240, upheld the appeal of an operator who had challenged the rejection of his takeover of a garage business. The Court, in particular, focuses on the need to interpret the urban planning in an objective sense and in accordance with the general prohibition of the expulsion effect of already established businesses.

The specific case

In this case, the economic operator, assisted by our firm, is the tenant of a company branch consisting of the complex of assets organized for the exercise of a parking activity, given to him in possession by another company in the sector. However, the Municipality, having received the SCIA of takeover, did not accept his self-declaration and prohibited the incoming operator from starting and/or continuing the activity.

Therefore, with an appeal, the provision of the municipal administration was contested, together with the rule of the urban planning regulations, by virtue of which the municipal administration claimed to prohibit the exercise of the activity. In particular, following the modification of the mentioned regulations, the local authority had limited the possibility of establishing new parking activities in specific areas, while still "*preserving the activities already regularly authorized and existing also in other areas of the consolidated urban fabric*" (art. 53 NTA of the relevant current PGT). However, the interpretation of the municipal authorities was in the sense that the occurred takeover fell within the prohibited "*new activities*".

The solution

The T.A.R., quite the opposite, considers the Municipality's measure to be contrary to the mentioned local regulations. It states, in fact, that "*the preferable interpretation of art. 53, c. 4, cit., is in the sense that the safeguard of the existing activities refers to objectively identified activities, regardless of the subject that exercises them, as long as in the change of such subject with another one there is no appreciable interruption, as occurred in the case in question*". The judge, therefore, reconfirms the principle according to which the urban planning regulations characterize "*in an objective manner the uses compatible with the zoning*" and cannot in any case have an expulsion effect on the activities already established.

Conclusions

It can therefore be concluded that, in the event that a local regulation supervenes,

that prevents the establishment from scratch of a certain activity in an area where it was legitimately established, the mere change, by contractual act, of the economic entity that exercises it, without any interruption, cannot in itself turn its continuation to becoming illegitimate: the rules of the planning instrument cannot have an expulsion effect on those who legitimately operate there.

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