



Courtyard maintenance costs - private garden above private garages: which cost sharing criterion is applied?

The Court of Rome dealt with a courtyard-roof garden above garages whose premises had been damaged by water infiltration from the exclusive property.

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Generally, the expenses relating to common goods must be divided among all the condominiums on the basis of the thousandth table relating to the property.

In determining the criterion for allocating these expenses, it is also necessary to consider the utility deriving from the common good.

So if it is necessary to proceed **with the repair of the condominium courtyard, which also serves as a cover for the underground rooms of exclusive property of individual condominiums**, for the purposes of the distribution of the relative expenses, it is not possible to resort to the criteria provided **for by art. 1126 of the civil code**, **but it is necessary, instead, to proceed with an analogical application of the art. 1125 of the Civil Code**

Moreover, in the event that the roof slab of garages (or basements) in single ownership performs the function of allowing access to the condominium building, there is no **particular use of a condominium compared to the others**, but a **' use in accordance with the typical** (although not exclusive) use of this building by all condominiums.

Furthermore, if the attic serves as a courtyard and the transit or parking of motor vehicles is allowed on it, it is clear that this is responsible for the preponderant deterioration of the flooring, so it would be illogical to charge one third of the expenses relating to the condominiums of the rooms below.

Naturally, **the expenses for the repair of the condominium garden-pavement, which also serves as the attic for an underlying garage**, must also be divided according to the criteria established by art. 1125 of the Civil Code, thus attributing half to the owner of the aforementioned premises.

And if the infiltrations to the underlying garages were to arise from a courtyard-garden of exclusive property. Should article 1126 of the Civil Code be applied or should article 1126 of the Civil Code be applied?

The issue was addressed **by the Court of Rome in sentence no. 1869 of February 3, 2023.**

Courtyard maintenance costs - private garden above private garages. The story.

A condominium owner challenged a shareholders' resolution which he considered illegal **for having charged him with the waterproofing work in the courtyard-garden which served as a cover for the garage**.

According to the plaintiff, the expenses for the aforementioned intervention were to be divided on the basis of the provisions of article 1126 of the civil code (1/3 to be paid by the plaintiff and 2/3 by the condominiums and/or all the subjects involved in the coverage) or on the basis of the criterion established by the combined provisions of articles 1123 and 1125 of the civil code,



attributing the costs in equal parts to the owner above and to the owners of the underlying garages.

The condominium appeared in court and observed, among other things, how **the criterion for the distribution of expenses contained in the contested resolution was consistent with the provisions of art. 10 of the regulation** which, in regulating the *"Expenses for repairs in private properties"*, specified the following: *"The expenses for ordinary and extraordinary repairs within the individual properties are the responsibility of each condominium. Each condominium is obliged to carry out in the premises of his property the repairs the omission of which could damage the others or common parts"*.

Moreover, the defendant pointed out that each condominium as custodian of its assets is obliged to take all necessary measures so that its property does not cause damage to third parties, responding, on the basis of art . **2051 of the civil code** , of the damages caused by this to the exclusive properties and/or to the common parts of the condominium, even if such damages are attributable to faults and constructive defects of the property; according to the condominiums, the infiltration of water into the underlying condominium garage originated precisely from original defects and construction deficiencies of the private garden-courtyard, attributable to the construction company.

The decision.

The Court ascertained a situation of maintenance deficiencies attributable to the entire condominium structure; consequently - with specific reference to the situation of the plaintiff condominium - the same Court held that the criterion for subdividing the expenses for the necessary interventions **should be resolved according to the discipline provided for by art. 1125 of the civil code** , this provision provides for **the charging of the expenses for the waterproofing of the attic in equal parts between the owners of the gardens - private courtyards and the owners of the garages , the cost of covering the floor** remaining the responsibility of the exclusive owner of the garden-courtyard **and, for the part intended as a garden, the costs relating to the removal, provision, restoration of the roof garden** (not mentioned, however, in the sentence); on the other hand , **the costs for the plaster, the paint and the decoration of the ceiling** are borne by the owners of the garages .

In any case, in the absolute lack of proof of the effective existence of a contractual regulation, the Court did not consider the clause of the regulation highlighted by the defendant condominium.

Source: <https://www.condominioweb.com/spese-di-manutenzione-del-cortile-giardino-soprastante-autorimesse-private-quale-criterio-di-ripartizione-delle.20256#2>

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