



Closing of a terrace with transparent windbreak panels

The demolition order for a construction work consisting of closing two balconies by laying plexiglass panels sliding on guides is illegitimate as this type of construction activity is free and does not require any license.

Maurizio Tarantino Lawyer - Court of Bari 05/02/2020

The story. The applicants challenged the demolition order with which they had been ordered to demolish the "closure of two balconies of 7.00 x 1.00 and 5.00 x 1.00 m by laying plexiglass panels sliding on guides".

In particular, these had installed on their balconies a structure in totally disappearing windbreak glass panels, without uprights. In 2018 the administration proceeded to an inspection, followed a procedural contradiction, at the end of which the demolition contested here was ordered.

Against the demolition order, the applicants objected to the violation of Articles 3, 6, 10 and 33 of the Presidential Decree n. 380/2001, the excess of power for misrepresentation of the facts, lack of presupposition, unreasonableness, contradictory, deficient or erroneous motivation, manifest injustice, misuse.

The type of manufactured product would fall within free construction and would not even be part of the provisions of art. 122.2 of the building regulations of the Municipality of Turin, which governs the verandas.

The reasoning of the TAR. According to the administrative judges, in the documents in the case there was no further clarification about the characteristics actually relevant to ascribe the artefact rather to a veranda (governed by the building regulation and requiring a building permit), or simply curtains; it was not clear, in fact, from the proceedings, whether the disputed structure was movable or not.

In the procedural contradiction, the administration had argued that for the "application customs" of the Municipality, the artifacts would be framed in the verandas that art. 122.2 of the municipal building regulation defines "ancillary buildings to houses consisting of glass walls and roofs and a wooden or metal structure strictly limited to the load-bearing function ...".

However, according to the TAR, comparing the definition of the building regulation with the meager description given in the inspection report, it was not clear where the administration had identified a load-bearing structure in wood or metal and with what characteristics such as to justify assimilation to a veranda rather than a simple tent, which also needs at least a guide for installation, and which the administration itself places under free construction. According to the description provided in the application, and in any case not denied by the administration, the plexiglass panels are not "pushed together" and allow the air to pass, limiting, in fact, to sliding on guides and being able to fully fold, so that in practice: no structure or element remained visible on the balcony; there was no lateral upright and the building is entirely transparent; a closure was not made that would make the balcony potentially suitable for use as an abusive room.

In definitive, in the face of a new building that does not have the standard characteristics of the veranda or the simple tent, it is clear that the dispute would have required the timely analysis of the discriminating elements (such as for example the presence of vertical load-bearing structures, although read, immovable) that can justify the charge.



In conclusion, the demolition order was canceled.

SUMMARY TABLE

OBJECT OF THE PRONUNCIATION	VERANDA BUILDING LICENSE
RIFERIMENTI NORMATIVI	Presidential Decree n. 380/2001.
PROBLEM	In the present case, the applicants had challenged the demolition order with which they had been ordered to demolish the "closure of two balconies by laying plexiglass panels sliding on guides".
THE SOLUTION	The administrative judges gave reason to the applicants, starting from the assumption that - in the documents - there was no clarification about the characteristics actually relevant to ascribe the artefact rather to a veranda (governed by the building regulation and requiring a building permit), or simply curtains; in fact, it was not clear from the documents of the procedure whether the disputed structure was movable or not, much less whether it implies the presence of fixed elements or not.
THE MAXIMUM	<i>The demolition order for a construction work consisting of closing two balconies by laying sliding plexiglass panels on guides is illegitimate as this type of construction activity is free and does not require any license.</i> Tar Piedmont 7 January 2020 n. 18

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