



GECOSEI

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Who pays for the broken arm of the passerby who, passing on the driveway used by the condominium, falls due to the instability of the flooring?

The answer in a recent decision of the Court of Pisa

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By pavement we mean that part of the road, outside the carriageway, raised or otherwise delimited and protected, intended for pedestrians. The sidewalk in front of the condominium is **therefore public land and belongs entirely to the public administration.**

Consequently, the municipal administration has the duty to guarantee the circulation of vehicles and pedestrians in safe conditions not only on the road it owns, but also on the areas adjacent to the public road.

In particular, **the maintenance obligations of the public body** that owns a road open to public transit, in order to avoid the existence of hidden dangers, **extend to the sidewalks**, which are part of the structure of the road, being intended for the transit of pedestrians.

It was therefore stated that the damage resulting from a fall caused by the presence of ice on the sidewalk in front of a condominium building **cannot be held responsible pursuant to art. 2051 cc the frontal condominium**, in the absence of evidence against the same as to the quality of custodian or the existence of maintenance or management obligations released from ownership of the property (Court of Turin 5 December 2012).

But can this conclusion also be valid when passing on the driveway used by the condominium, **stumbles and falls due to the instability of the flooring**? The question that arises is which of the subjects involved can be indicated as the caretaker, the municipality owner of the road or the condominium owner of the driveway that insists on the portion of the sidewalk where the event took place? The answer is contained in the motivation of sentence no. **247 of February 24, 2022** of the Court of Pisa.

Condominium and fall on the driveway: the regulatory framework

The art. 22, paragraph 3 of the Highway Code, with reference to accesses and branches, establishes that **the driveways must be identified with the appropriate sign**, subject to the authorization of the owner; paragraph 7 of the same article 22 of the Highway Code specifies that **the regulation indicates the methods of construction and maintenance of the entrances and branches**; the regulation of execution and implementation of the highway code, DPR n. 495/1992, in art. 46 (Access to urban roads).

Driveway art.22 Cs) in paragraph 1 establishes that the construction of driveways is authorized by the body that owns the road **in compliance with the building and town planning legislation in force** but does not provide for the maintenance obligation.

Condominium and fall on the driveway: the story

The story began when a passer-by, passing on the driveway used by the condominium, tripped and fell due to the **unevenness of the pavement which had holes and lack of tiles**; following this accident she went to a radiological office and then to the hospital emergency room where she was diagnosed with an elbow fracture which was put in a plaster cast; subsequently he decided to sue the municipality and the condominium that had used the driveway, asking for a



sentence to pay compensation for damages (property and non-property) for the injuries suffered.

According to the condominium, **the accident and the alleged custody obligation of the building had not been proven** ; in the same way, the insurance of the condominiums called into question by the condominium, contested, among other things, the reconstruction of the actress and objected **to the inoperability of the policy as the public sidewalk was not to be considered part of the condominium or its relevance** ; the Municipality, on the other hand, turned the out-of-court request for compensation to the company in charge of managing compensation requests of this type, which after the investigation rejected the request, arguing that **the accident had occurred on a stretch of road subject to an authorized driveway for which condominiums were responsible** ; in any case he complained about the lack of a report from the municipal police and the emergency room.

Condominium and fall on the driveway: responsibility

The Court highlighted that the plaintiff party provided proof of the event that had occurred: the evident failure of the part of the sidewalk where the fall took place (in the hole); the causal link between the event and the injuries, confirmed by the witness and the medical examiner carried out.

Having said that, in the light of the aforementioned legislation on the matter, the court of first instance noted **that it is the owner body that, with its own regulation, must govern the construction and maintenance of driveways in urban areas.**

In the case, however, a regulation of the Municipality (**whose knowledge is not burdened by the judge**) has not been produced, nor does it appear that the dangerous situation has been reported by one or other of the subjects involved in the maintenance of the sidewalk section with a request for intervention for accommodation.

Faced with this situation, the Court affirmed that **the custody obligation must fall both on the holder of the driveway concession and on the Municipality which is bound in any case to a duty of supervision**; consequently both were condemned, with joint and several obligation, to compensation for damages in the amount of 50% each.

However, correctly interpreting the clauses of the condominium insurance contract, the Court specified that the Company must hold the condominium harmless for the share of liability (50%) of the compensable damage.

Source: <https://www.condominioweb.com/chi-paga-per-il-braccio-rotto-del-passante-che-transiando.19027>

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