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EXPROPRIATION IN PUBLIC INTEREST

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INDEX

1. INTRODUCTION

As it is well known, since only a few decades ago, the discipline regarding expropriation in public interest[1] has found an organic layout with the adoption of the

[1] The Literature regarding this matter is truly enormous, so we will just indicate, without pretension of completeness, monographic works and encyclopaedic headings. For the less recent doctrine, you can consult: S. PUGLIATTI, *Teoria dei trasferimenti coattivi*, Messina, 1931; P. CARUGNO, *L'espropriazione per pubblica utilità*, Milano, 1950; S. PUGLIATTI, *La proprietà nel nuovo diritto*, Milano, 1954; G. PESCATORE, *Art. 834*, in G.

consolidated statutes issued with d.p.r. n. 327 of 2001, then modified by the d.lgs. n. 302 of 2002[2]. In the last decades before the introduction of that articulated normative, when the fundamental law of 1865[3] was still used in nearly all expropriations, jurisprudence played a decisive role, sometimes, even creating, *ex novo*, full institutes[4]. Even if this praetorian

PESCATORE – R. ALBANO – F. GRECO (a cura di), *Commentario del Codice civile*, Libro III, *Della proprietà*, Torino, 1958, 152 ss.; U. ARDIZZONE, *Dichiarazione di pubblica utilità*, in *Enc. dir.*, XII, Milano, 1964, 391 ss.; M. ROSSANO, *L'espropriazione per pubblica utilità*, Torino, 1964; G. LANDI, *Espropriazione per pubblica utilità (princìpi)*, in *Enc. dir.*, XV, Milano, 1966, 806 ss.; U. ARDIZZONE, *Espropriazione per pubblica utilità (procedimento)*, *ibidem*, 834 ss.; F. BARTOLOMEI, *L'espropriazione nel diritto pubblico*, Milano, I, 1965 e II, 1968; A.M. SANDULLI, *I limiti della proprietà privata nella giurisprudenza costituzionale*, in *Giur. cost.*, 1971, 962 ss.; ID., *Profili costituzionali della proprietà privata*, in *Riv. trim. dir. e proc. civ.*, 1972, 465 ss.; G. VERBARI, *La dichiarazione di pubblico interesse*, Milano, 1974; D. SORACE, *Espropriazione della proprietà e misura dell'indennizzo*, Milano, 1974; S. RODOTÀ, *Art. 42*, in *Commentario della Costituzione*. Artt. 41-44 *Rapporti economici*, a cura di G. Branca, Bologna-Roma, 1982, 69 ss.; E. STICCHI DAMIANI, *La dichiarazione di pubblica utilità*, Milano, 1983; G. LANDI, *L'espropriazione per pubblica utilità*, Milano, 1984. More recently, G. MORBIDELLI, *Dichiarazione di pubblica utilità*, in *Dig. disc. pubbl.*, V, Torino, 1990, 53 ss.; E. CASETTA – G. GARRONE, *Espropriazione per pubblico interesse*, in *Enc. giur.*, XIII, Roma, 1990; D. SORACE, *Espropriazione per pubblica utilità*, in *Dig. disc. pubbl.*, VI, Torino, 1991, 178 ss.; F. VOLPE, *Le espropriazioni amministrative senza potere*, Padova, 1996; G. LEONE – A. MAROTTA, *Espropriazione per pubblica utilità*, in *Trattato di diritto amministrativo*, diretto da G. Santaniello, XXVII, Padova, 1997; R. CARANTA, *Espropriazione per pubblica utilità*, in *Enc. dir.*, Agg., V, Milano, 2001, 404 ss.; L. FRANCARIO, *Espropriazione per pubblico interesse – Art. 834*, in *Il Codice Civile. Commentario*, fondato da P. Schlesinger e diretto da F.D. Busnelli, Milano, 2002; M. CONTICELLI, *L'espropriazione*, in *Trattato di diritto amministrativo*, by S. Cassese, 2ª ed., Milano, 2003, vol II, 1929 ss.; F. CARINGELLA – G. DE MARZO – R. DE NICTOLIS – L. MARUOTTI, *L'espropriazione per pubblica utilità*, 2ª ed., Milano, 2003; C. GALLUCCI, *Espropriazione per pubblico interesse (postilla di aggiornamento)*, in *Enc. giur.*, XIII, Roma, 2005.

[2] For a comment of the abovementioned consolidated statues, F. CARINGELLA – G. DE MARZO – R. DE NICTOLIS – L. MARUOTTI, *op. cit.*

[3] Law 25 June 1865, n. 2359.

[4] So R. CARANTA, *op. cit.*, 407, regarding the controversial institute of ratifying acquisition, as then received by the legislator (v. *infra*, § 2).

creation has been for the most part eliminated by the coming into force of an unitary normative *corpus*, jurisprudence, especially at high levels, it has continued to exercise a fundamental role, representing – as we will see – both a compass for operators and erudites of this complex subject, and a precious instrument to change the course traced by the consolidate statues.

2. THE SO CALLED «RATIFYING ACQUISITION»: DEATH AND RESURRECTION OF AN INSTITUTE

With regards to the praetorian jurisprudence that has characterized the evolution of this subject, experts cannot fail to recall that, about thirty years ago, the Constitutional Court invented, out of the blue, a new way to purchase property by Public Administration, declaring that private ground accedes to public deed and that the right to its restitution is converted into the right to compensation of damages, during the illicit behaviour of the administrative authority[5].

Although the doctrine immediately showed serious doubts regarding its compatibility with the rule of law[6], this institute – known as «acquisitive occupation» or «appropriative» – ended up finding a legislative covering, thanks to the backing of the Constitutional Court[7] and to that of the Supreme Court, that excluded any kind of contrast

[5] Sez. un., 14 February 1983, n. 1464, in *Foro it.*, 1983, I, 626, con nota di R. ORIANI, *Prime osservazioni sulla c.d. occupazione appropriativa da parte della p.a.*.

[6] For all, A. GAMBARO, *L'occupazione acquisitiva e i dialoghi tra i formanti*, in *Foro it.*, 1993, V, 417; *amplius*, ID., *Occupazione acquisitiva*, in *Enc. dir.*, Agg., IV, Milano, Giuffrè, 2000, 854 ss.

[7] As reffered by R. CARANTA, *op. cit.*, 423, to which we defer for normative and jurisprudential reference, the Council, infact, had saved the legislator's choice to adopt for appropriative occupation – instead of the full compensation for damages that should compete to the owner that suffered the illicit – the same compensation that is due in case of legitimate expropriation, just excluding the 40% reduction and foreseeing another 10% increase.

with the European Convention on human rights, showing that the institute presupposes a valid declaration of public utility, with respect to the statutory reserve and a compensation that is appropriate to insure the right balance between interests[8] involved.

In the opposite direction was the Court of Strasbourg, that affirmed the incompatibility of the jurisprudential construction with art. 1 of the first additional Protocol to the abovementioned Convention[9].

Nevertheless, instead of considering it a starting point to modify the regulation of expropriation retracing its own traditional juridical culture and abiding to the European prescriptive directions[10], the Italian legislator held to replace the institute created by the praetorian jurisprudence with an appropriate provision of the consolidate statutes on expropriations of 2001 (art. 43), that allowed the so called «ratifying acquisition», *id est* the acquisition to the administration's undisposed real estate patrimony modified for public interest purposes, without a valid ablatory measure. Even this last institute had long survived much criticism that came from the doctrine[11], until, just over a year ago, when the constitutional Court recognised an excess of proxy and declared the unlawfulness of the abovementioned provision of the consolidated statues for violation of article 76 of the Constitution[12]. The Council, moreover, even if in an incidental[13] way, also highlighted the

[8] Sez. I, 25 February 2000, n. 2148, in *Urb. e app.*, 2000, 616.

[9] C.E.D.U., Sez. II, 30 May 2000, *Albergo Belvedere*, in *Guida al diritto*, 2000, n. 39, 108.

[10] As had been wished at the end of his encyclopediac article, R. CARANTA, *op. cit.*, 427.

[11] Summerized and disproved Criticisms by L. MARUOTTI, *Art. 43*, in F. CARINGELLA – G. DE MARZO – R. DE NICTOLIS – L. MARUOTTI, *op. cit.*, 606-611. For other bibliographic notes on the matter, please see E. ZAMPETTI, *Acquisizione sanante e principi costituzionali*, in *Dir. amm.*, 2011, 569 ss., spec. 570-571, nota 3.

[12] Sent. 8 October 2010, n. 293, in www.lexitalia.it, n. 10/2010, commentated, *in primis*, da F. PATRONI GRIFFI, *Prime impressioni a margine della sentenza della Corte costituzionale n. 293 del 2010, in tema di espropriazione*

uncertain compatibility of the institute with the principles stated by the European Court of Human Rights, declaring in clear letters that the legislator could have obtained its goal in another way <<and even completely removing the chance of acquisition connected exclusively to facts of possession, guaranteeing the restitution of the property to the private citizen, in analogy with other European legal systems».

The administrative jurisprudence immediately tried to fill the normative gap determined by the abovementioned constitutional judgment, declaring, just about a month later, the enforceability of the institute of specification (art. 940 c.c.), thanks to which <<the property of public work is acquired, a titolo originario, by the specifying office when the specification work is completed, that is to say, when the specification has occurred; this happens not as a consequence of an illicit act, but of an institute that has its roots in Roman Law and evidently constitutes a fact that gives a right to an indemnity not an illicit that gives right to damage compensation»[14].

This innovative solution was difficult to share because, in our legal system, the legal paradigm of work done by a third party with its own materials on someone else's land finds its ruling in art. 936 c.c., precisely named, «Work done by a third party with their own materials»[15]. What's more, the specification institute regards, personal properties, so,

indiretta, in www.federalismi.it, n. 19/2010; R. CARIDÀ, *La Consulta decreta la fine dell'acquisizione sanante? La parola al legislatore … o alla fantasia della giurisprudenza*, in www.giurcost.org.

[13]From here the criticism of some commentators regarding an attitude so called <<attendista>> because it was inspired by the intent not to take position on the discussed matters, .: G. RAMACCIONI, *La tutela multilivello del diritto di proprietà: il caso della acquisizione sanante. Da Locke a Renner … e ritorno!* (Report on the Conference on <<Civil Law and European and Italian consitutional principles>> - Perugia, 25-26 March 2011), in http://principi-ue.unipg.it, 16 of the script.

[14] T.A.R. Puglia-Lecce, Sez. I, 24 November 2010, n. 2683, in www.lexitalia.it, n. 11/2010.

[15] S. LEONE, *Illegittimità costituzionale dell'articolo 43, d.p.r. 8 June 2001, n. 327: dubbi e soluzioni interpretative*, in www.lexitalia.it, n. 2/2011.

also for this reason the hermeneutical operation carried out by the Judges of Lecco – who intended to create a «mitigation of the unrestricted character of landed property» such to mitigate the distinctive elements compared to the movable ones starting from the same concept, the concept of modifying something, «in such an incisive way to create something that cannot be identified with the one existing before the modification» – seemed to be slightly forced[16].

The conclusion of a different Court, which stated that, keeping things this way, after the jurisdictional annulment of the expropriation decree, there had to be total restitution of the land, after restoring it to its former state, together with compensation for damages due to the missed enjoyment of it, seemed maybe less original, but more realistic[17]. It is obvious, to say the least, that it was a tragic conclusion for public administrations, which, in the presence of illegitimate occupations followed by irreversible transformations, could not have done anything but restore the previous situation, in spite of public utility[18].

The interpretative solution based of articles 934 and 936 c.c., according to which the owner of the land could have chosen to acquire the property of the work carried out on the land or force its executer to remove it, seemed even more penalizing for the public company[19].

This practical consideration regarding the state of the public interest that is at the

[16] M. MORELLI, *Il vuoto normativo lasciato dall'abrogazione dell'art. 43 D.p.r. n. 327/01: l'analisi della situazione in atto impone un immediato intervento legislativo*, in www.lexitalia.it, n. 2/2011, § 1.

[17] Così T.A.R. Toscana, Sez. I, 11 January 2011, n. 29, in www.lexitalia.it, n. 1/2011.

[18] M. MORELLI, *ibidem*. Also critical S. LEONE, *ibidem*, who believes that the solution of the Tuscany Judges goes against art. 936 c.c.

[19] In this way, T.A.R. Campania-Napoli, Sez. V, 18 January 2011, n. 262, in www.lexitalia.it, n. 1/2011.

base of expropriations, was probably what inspired a different jurisprudence, to try and limit the effects of the decision of unconstitutionality of October[20] 2010 on one hand, and on the other, to try and find solutions to compromise, such as the one that, in case of illegitimate occupation followed by irreversible transformation of the land, excluded that public administration could be condemned exclusively to compensation, believing that, this kind of condemnation necessarily presupposes that the transfer of the property to public hands has occurred, a transfer that, since the abrogation of art. 43, could have not happened without an agreement *ex* art. 11 l. n. 241 del 1990 for the free transfer of the goods to the administration[21]. In accordance with this interpretation, the administrative Judge could admit the compensation request only if there was a previous agreement on the matter[22], agreement that, anyhow, doesn't seem to be able to be imposed *iussu iudicis*[23], so, if the private person that has been expropriated insists on restitution tutelage, it has to be disposed unless there are the presuppositions to apply art. 2933, paragraph 2, and/or 2058

[20] We refer to T.A.R. Piemonte, Sez. I, 14 January 2011, n. 21, in www.lexitalia.it, n. 1/2011, that believes that the constitutional judgment n. 293/2010 doesn't apply ex se, making them become directly void, on administrative provisions that have been adopted in force of art. 43 d.p.r. n. 327/2001, before the same judgment. More recently, Cons. Giust. Amm. Reg. sic., 19 May 2011, n. 369, *ivi*, n. 6/2011, excluded that such decisions can have effect in confront of a litigation for which, at the date of the publication of the Court judgment, a verdict had been emitted, even if not definitive, become res judicata with which the existence of the petitioner's right to the restitution of the goods had been appointed only theoretically, but in actual fact had been rejected, saving only the compensation profiles, the annulment of the provision of the ratifying acquisition.

[21] It is the formulation of T.A.R. Campania-Salerno, Sez. II, 14 January 2011, n. 43 (in www.lexitalia.it, n. 2/2011), shared by: Cons. St., Sez. IV, 28 January 2011, n. 676 (*ibidem*); T.A.R. Sicilia-Palermo, Sez. II, 1 February 2011, n. 175 (*ibidem*); T.A.R. Lazio-Roma, Sez. II *quater*, 4 March 2011, n. 3260 (in www.giustamm.it, n. 4/2011); Cons. St., Sez. IV, 1 June 2011, n. 3331 (in www.lexitalia.it, n. 6/2011).

[22] This way, explicitly, T.A.R. Lazio-Roma, Sez. II *quater*, n. 3260/2011, cit.

[23] G. VIRGA, *Le occupazioni illegittime della P.A. dopo il "tramonto" dell'acquisizione sanante*, in www.lexitalia.it (17 April 2011).

c.c.[24] or indeed the entire ablatory procedure with its guarantees[25] is renewed.

So, while the doctrine hoped that the legislator, whose intervention could be postponed no longer, would have kept the constitutional Court's suggestions in the right consideration, getting rid of the critical elements of the ratifying acquisition institute as ruled by art. 43 of the consolidated statues[26], in the last month of July, the same institute has been reintroduced in a law by decree that contains urgent dispositions for financial stabilization[27].

Being premature to ask ourselves if, with this latest legislative intervention, the long doctrinal and jurisprudential travail that has constantly accompanied, practically for thirty years, the institute of the acquisitive occupation, has found its final landing[28], deferring the first comments for a confrontation between the "new" art. 42-bis with the

[24] Cons. St., Sez. VI, 13 June 2011, n. 3561, in www.lexitalia.it, n. 6/2011. Different – and, in our opinion, not shareable because in contrast with C.E.D.U.'s path – the formulation of Cass., Sez. un., 31 May 2011, n. 11963, *ibidem*, for which, in case of illegitimate occupation and subsequent irreversibile transformation of the land by public administration, the action for recovery of the property of the suffered damages *ex* art. 2058, paragraph 1, c.c. would be normally destined to a negative result, because prioritary fulfilment has to be given to the interest based at the realization of the work, so only in the case that the conditions truly found give testimony to the public administration's lack of interest only subsequently to the originally goal that was originally considered worthy of fulfilment, nothing would be opposed to the restitution of the land.

[25] Cons. St., Sez. IV, 2 September 2011, n. 4970 e 29 August 2011, n. 4833, in www.giustizia-amministrativa.it and in www.lexitalia.it, n. 9/2011.

[26] So S. PIERONI, *Il* de profundis *della acquisizione coattiva 'sanante' ... Sarà vera fine?*, in www.federalismi.it, n. 23/2010, § 6.

[27] Art. 34, paragraph 1, d.l. 6 July 2011, n. 98, converted in l. 15 July 2011, n. 111, that introduced, in the text of the d.p.r. n. 327/2011, art. 42-*bis*, named «Utilizzazione senza titolo di un bene per scopi di interesse pubblico».

[28] So C. VARRONE, *L'accessione invertita fa finalmente il suo ingresso nell'ordinamento di settore dalla porta principale*, in www.giustamm.it, n. 8/2011.

"old" art. 43[29] and to the first jurisprudential decisions for the resolution of the interpretative problems that regard the new disposition[30], we will just observe how this disposition, on one hand exonerates jurisprudence from the burden to turn to interpretative vicissitudes to exclude the right to the restitution of the goods in favor of the expropriated person, on the other hand, it doesn't seem exempt from the risk of a new decision of unconstitutional – there where consideration isn't taken in account for the council's suggestion to find alternative solutions more in line with C.E.D.U.'s[31]*dicta*, explanations with the intent to circumscribe to really exceptional cases, the use of an institute that

[29] Cfr. M. MORELLI, *Il nuovo art. 42*-bis *del D.p.r. n. 327/01*, in www.lexitalia.it, n. 7-8/2011; ID., *Art. 42* bis *del D.p.r. n. 327/01: ma perché non un nuovo procedimento di esproprio?*, *ivi*, n. 10/2011; M. NUNZIATA, *Il nuovo provvedimento di acquisizione sanante* ex *art. 42* bis *del T.U. espropri: applicazione solo dopo la condanna del G.A.?*, in www.giustamm.it, n. 11/2011.

[30] Among the first decisions, we highlight: T.A.R. Sicilia-Catania, Sez. III, 19 August 2011, n. 2102, in www.lexitalia.it, n. 7-8/2011, for which the G.A. (Administrative Judge) can accept the compensation request that comes from occupation *sine titulo* of private goods for public interest, definitely transformed, postponing the effects at the moment of the issue of a formal acquisitive provision as ruled by art. 42-*bis*; T.A.R. Campania-Napoli, Sez. V, 12 October 2011, n. 4659, *ivi*, n. 10/2011, which decides that, thanks to a new provision, the administration can become owner of the occupied goods or at the end of the proceeding, that is concluded with the expropriation decree, or with the cession of the expropriated goods, or when the goods have been modified in absence of a valid and effective expropriating or declarative provision, the provision of acquisition to the patrimony that cannot be disposed of as ruled by 42-*bis*; Cons. St., Sez. V, 2 November 2011, n. 5844, *ivi*, n. 11/2011 which rules that also the moral damage of the expropriated owner has to be compensated, by the expropriating authority that has already manifested *per facta concludentia* the will to keep the private goods; finally, Sez. VI, 1 December 2011, n. 6351, *ivi*, n. 12/2011, that suggests that, in the actual normative picture, the administration has the juridical obligation to eliminate *sine titulo* occupation, in other words, has to match the real situation with the juridical one, and to do so, it has two options: a) give back the lands to the owners, eliminating what was built and putting it back to its former state; b) activate itself o provide a valid ownership title of the area for the actual subject.

[31] N. D'ALESSANDRO – S. LEONE, *La demanialità del bene quale limite all'applicazione dell'art.42*-bis *T.U. espropriazioni ed alla restituzione del bene nell'ipotesi di occupazione* sine titulo, in www.lexitalia.it, n. 7-8/2011, § 4.

represents, in our Country, a real alternative way to the correct procedure of expropriation[32] – and, above all, for how it's contrived it doesn't render particularly tempting, for the expropriating administration, the path of the ratifying acquisition, that doesn't seem to be more simple than the renovation of the expropriating procedure[33], in many ways far more straightforward.

3. THE REPEATED INTERVENTIONS OF CONSTITUTIONAL JURISPRUDENCE REGARDING EXPROPRIATION IN PUBLIC INTEREST

As it is known, on account of two famous constitutional judgments of 2007[34], both expropriation indemnity and compensation for damages caused by acquisitive occupation have to correspond to the true price of the goods that are the object of the ablatory proceeding, as was ruled by art. 39 of the fundamental law of 1865[35].

Jurisprudence, though, believed that, in the case of land not being suitable for building, dispositions which decided that the expropriation indemnity had to be calculated with prices that don't consider the area object of the expropriating procedure and ignore

[32] So A. GUAZZAROTTI, *Espropriazioni illegittime e tutela multilivello della proprietà: prospettive costituzionali*, in *Studium iuris*, 2011, 515; P. CERBO, *Profili di costituzionalità della cd. acquisizione sanante*, in *Urb. e app.*, 2009, 215 ss.

[33] On this point, *amplius*, M. MORELLI, *Art. 42* bis, cit., §§ 2-3.

[34] Sentt. 24 October 2007, nn. 348 e 349, in www.giurcost.org.

[35] Cass., Sez. un., 14 February 2011, n. 3567, in www.lexitalia.it, n. 2/2011; Sez, I, 25 November 2010, n. 23965 e 21 June 2010, n. 14939, in *Urb. e app.*, 2011, 302 and in *CED Cassazione*, 2010.

any factor regarding the specific elements of the goods, continue to be applied[36].

A few months ago, the constitutional Court ruled again, deciding that the regulation is constitutionally illegitimate, because it goes against art. 117, paragraph 1, Cost., with reference to art. 1 of the first additional Protocol of the European Convention of human rights, in the interpretation given by the Court of Strasburg, and with art. 42, paragraph 3, Cost.[37]. According to the Judges of the law, that criteria has an inevitable abstract character, that eludes the reasonable tie with the market value of the transferred goods, prescribed by C.E.D.U. and evidently consistent, with the serious relief asked for by the constitutional jurisprudence (truly only by the most recent one!), so, «being clear that the legislator hasn't got the burden to totally adapt the expropriation indemnity to the market value and that a full indemnification isn't always guaranteed by Cedu, the necessity to have an evaluation of the suitability of the expropriating indemnity, determined by using eventual mechanisms of correction to the market value, imposes that it must be assumed as a reference by the legislator, in order to guarantee the right balance between general interest and the safeguard of individual fundamental rights».

Another negative mark, has been inflicted on expropriation consolidated statues, by the constitutional Court, that following C.E.D.U.'s steps, seems to have the intention to turn the previous legislative system, acknowledged by 2011 consolidated statues, upside down, because it sacrifices the legitimate claims of the expropriated parties[38] too much.

It is clear that, once that the restrictive criteria of the expropriation indemnity

[36] Cfr., *ex multis*, Cass., Sez. un., 2 February 2011, n. 2419, in *CED Cassazione*, 2011, considered applicable the criteria of art. 13 l. n. 2892/1885 (the so called law «for the reclamation of the city of Naples»), that leads to the determination of an indemnity inferior to the real sale price.

[37] Sent. 10 June 2011, n. 181, in www.giurcost.org.

[38] M. MORELLI, *Le picconate al Testo Unico sugli espropri: non sarà il caso di intervenire in via legislativa?*, in www.lexitalia.it, n. 6/2011, § 1.

based on average agricultural prices has been eliminated, the general criteria of indemnity calculated on the saleable price of the good, as decided by art. 39 of the fundamental law of 1865[39] becomes applicable.

In any case, not long from now, the Council's axe could hit again, as, a few months ago, a question regarding the constitutional legitimacy of art. 37, paragraph 7, of the expropriation consolidated statues was raised, in the part where, in case of omitted declaration or a declaration of prices absolutely derisive on tax bases, doesn't regulate a limit for the expropriation indemnity reduction suitable for excluding the total elision of any reasonable report between the saleable price of the expropriated land and indemnity amount, damaging somehow also the right to serious compensation for the owner[40].

4. TOWN BINDS: A NEVER ENDING STORY

In conclusion, we need to point out the lasting jurisprudential uncertainty regarding the difference between expropriating binds and conforming binds.

As it is known, after a famous constitutional decision of 1999[41], art. 9 of the consolidated statues on expropriation – which says that the expropriation prearranged bind lasts 5 years and ends if within that time the public use of the property isn't declared as it can be reiterated only with a reason – is applied only to expropriating binds and not to the conforming ones.

We also have to point out that, for the majority of jurisprudence, binds which are

[39] Cass., Sez. I, 29 September 2011, nn. 19936 e 19938, in www.lexitalia.it, n. 10/2011.

[40] Cass., Sez. un., ord. 14 April 2011, n. 8489, in www.lexitalia.it, n. 5/2011.

[41] Sent. 12 May 1999, n. 179, in www.giurcost.org.

prearranged for expropriation are not important to determine the expropriation indemnity, that's the reason why the rule that decides that the legal possibility to build, depends on the provisions of town planning instruments and doesn't exclude the burden to discern, among these, between conforming and expropriating binds, considering that only the first can determine the nature of the expropriated area.

Clarifying the importance of this distinction, we have to refer that the municipal administrations usually overcome the difficulty of repeating the expropriating binds, transforming them in conforming binds, giving way to – with the culpable backing of jurisprudence which believes that the scheme of the ablatory bind when the peculiar conformation given to the land during urban land planning, leaves space for intervention also to the private, in respect of the kind of work that can be realized, if these are not reserved for the exclusive authority of the public hand[42] - in a way that ends up penalizing the private person, perpetuating a situation of private property compression that comes from the impossibility of realizing interventions of public use due to the lack of economic convenience, and also to the lack of information from the administrations that would let the private section understand the ways of intervening and managing public goods for an economic outcome[43].

[42] For the jurisprudential references we defer to the extensive reviews of V. SALAMONE, *I vincoli urbanistici preordinati all'espropriazione per pubblica utilità*, in www.giustizia-amministrativa.it (2 March 2010), spec. § 4. *Adde* Cons,. St., Sez. IV, 2 September 2011, n. 4951, in www.lexitalia.it, n. 9/2011, that, applying that distinctive criteria, affirmed, similarly to the constant jurisprudential orientation, that constitutes a confirmative bond, and not also expropriating – whose adding doesn't require the contextual compensation prevision, nor a punctual motivation or the reasons that are at the base of the prevision reiteration – the destination to parking lot decided by the town planning to chosen areas; T.A.R. Sicilia-Catania, Sez. I, 7 March 2011, n. 555, in www.giustizia-amministrativa.it, that instead has, considered with a substantially expropriating content, the bind of destination to public services of the area, with the consequent possibility to create only buildings for instruction, collective facilities, parking lots and green areas.

[43] P. URBANI, *I vincoli misti: tutela delle aspettative qualificate, interesse pubblico e discrezionalità amministrativa*, in www.pausania.it (16 June 2010), for which «from the frying pan of impermanence of town

Jurisprudence helps to complicate matters, as sometimes it considers more or less all the provisions contained in a second level general town planning scheme as conforming binds, also the ones that regard the future public use of areas such as green spaces, parking lots, services, etc, postponing to a future plan or a specific declaration of public utility the correct individuation of the expropriating land, at other times, jurisprudence affirms that the imposition of binds prearranged to expropriation can be contained in second level town planning instruments only if they have already individualized in a particular and detailed way the localization of the future public work[44].

planning binds, we have jumped to the fire of abstractly confirmative town planning binds, so much for respect of consitutional principals on the matter of property rights as by art. 42 Cost.».

[44] On the matter, R. GISONDI, *Edificabilità delle aree espropriate: una questione giuridica od urbanistica?*, in www.lexitalia.it, n. 5/2001.