

LEGITIMATE STATUS OF THE PROPERTY: BETWEEN SETTLED CASE LAW AND THE DECREE SALVA CASA

The legitimate status of the property has always been a subject of particular attention by administrative case law, which has not failed to decide on this point even before the introduction of paragraph 1-*bis* of Article 9-*bis* in the *Testo Unico dell'Edilizia*.

More specifically, the administrative Judge has repeatedly specified the documentation that is suitable to certify the legitimate status of the property, defining the salient features of a legal arrangement whose functions are to simplify administrative action in the construction sector, facilitate public controls on the regularity of construction and town planning activities and ensure certainty in the real estate transactions (see Constitutional Court, ruling 21 October 2022 no. 217).

If, for the purposes of the dating of unauthorized building and the possible assessment of the legitimate status of the property, the above-mentioned provision expressly allows the use of photographs, cartographic extracts, archive documents, or other public or private deeds, the provenance of which can be proved, the documents suitable for proving the state of the places and of the property at a given time and verifying the possible presence of unauthorized building also include the surveys extracted from *Google Earth* (so-called *raster*).

This assumption was most recently reiterated by the Second Chamber of the Council of State in ruling 3 June 2024 no. 4973.

In particular, in the case recently submitted to the attention of the judges of Palazzo Spada, the appellant appealed against a judgment of the Campania Regional Administrative Court in which it held that the use of *Google Earth* by the Municipality of Torre del Greco for the purposes of contesting a building abuse was legitimate.

Specifically, these *rasters* had revealed an increase in volume and a change in the outline and elevation, in an area subject to multiple environmental, landscape, seismic and hydrogeological constraints.

The Second Chamber of the Council of State reminds that "*the relevance for evidentiary purposes of the findings of Google Earth has been recognised by both administrative and criminal case law, since they are documentary evidence representing facts, persons or things*" (Council of State, Second Chamber, ruling 3 June 2024 no. 4973).

Moreover, the burden of proving the contrary lies with the private party concerned called upon to provide proof of the time when the building abuse was carried out (*ex multis*, Council of State, Sixth Chamber, 8 November 2023 no. 9612): the value of certain proof of the time when the abuse took place is such as to legitimise even the omission of the procedural guarantees provided for by the Law on administrative procedure (see Council of State, Sec. IV, 31 January 2024 no. 984 which

refers to Court of Cassation, Criminal Section, Second Chamber, 17 October 2022 no. 39047).

However, it seems appropriate to point out that the above-mentioned case law orientations must now be reconciled with the changes introduced by the so-called Decree Salva Casa (Decree-Law 29 May 2024 no. 69), which – with a view to administrative simplification – has also intervened on the provision contained in art. 9-*bis* of the *Testo Unico dell'Edilizia*.

While *rasters* and cadastral evidence are always a valid way to prove the original plano-volumetric consistency and the time of the interventions that determined the current conformation of the property, it should be recalled that – pursuant to the provisions of the amended paragraph 1-*bis* of Article 9-*bis* of the *Testo Unico dell'Edilizia* – the legitimate status of the building or building unit is that established by **(i)** the building permit that originally provided for its construction, or that legitimised the same, or **(ii)** the one that governed the last building intervention, together with any subsequent permits that authorised partial interventions.

This makes it possible to simplify the recognition of the legitimate status of the property; to this end, it will be sufficient to submit the permit that governed the last building intervention, so as to overcome the difficulties, encountered under current legislation, in proving the legitimate status of properties, especially with reference to buildings of past construction for which the authorisations date back in time.

The private party's trust is thus protected in cases in which the municipal technical offices have in the past expressly ascertained partial non-conformities with respect to the building permit but did not consider them relevant (proceeding to contest the building abuse).

All that remains now is to find out how the new provisions will be implemented by the administrative Judge.

The Firm will closely follow the forthcoming developments, remaining at your disposal for any needs.

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