

UNLAWFUL TO BYPASS THE CITY COUNCIL FOR RENOVATIONS INVOLVING CHANGE OF USE. THE CONSTITUTIONAL COURT INDIRECTLY CRITICIZES THE MUNICIPALITY OF MILAN

With its judgment of 18 April 2025, no. 51, the Constitutional Court examines the constitutional legitimacy of article 4 paragraph 4 of Lazio Regional Law no. 7/2017, which allowed – pending the adjustment of municipal urban planning tools – building interventions (renovations involving change of use) without the need for a special building permit in derogation. The ruling provides significant insights that may also guide the current debate about the so-called *Salva Milano* draft law.

The Case

The Constitutional Court is called upon to review the constitutionality of the provision that allowed *"building renovation works, including demolition and reconstruction, of individual buildings with a gross floor area of up to 10,000 square meters, involving changes in use among the functional categories identified in Article 23-ter of Presidential Decree no. 380/2001, excluding the rural category"*.

In particular, for a transitional period, the mentioned interventions were permitted without the special building permit in derogation as provided by article 14 paragraph 1-*bis*, of the Consolidated Building Act (T.U.E.), and thus without the approval of the municipal council.

The Court's Reasoning

Having clarified the inviolable core of municipal autonomy and the functioning of the principle of subsidiarity, the Court focuses its review on the proportionality of the regional legislation's impact on the urban planning authority attributed to municipalities.

Specifically, it's noted that the challenged provision effectively allowed bypassing the required assessment by the municipal council regarding the existence of a prevailing public interest over the current urban planning regulations. Such an assessment is a defining element of the *"procedure for granting the special building permit in derogation under Article 14-bis of the Consolidated Building Act,"* aimed at determining *"the appropriateness of allowing exceptions from the zoning plan or implementational plans"*.

The Court emphasizes that *"the challenged provision interfered even more deeply with the planning powers, as it stripped municipal councils – albeit temporarily – of any evaluation of the public interest underlying the proposed building interventions"*. The Court adds that *"this entails the risk of an uncontrolled increase in urban density and residential development"* and *"is incoherent with the general purposes stated by the regional law"*.

The Constitutional Court therefore concluded that *"the derogatory simplification measures provided for by the contested provision disproportionately and therefore unlawfully affect the fundamental function of municipalities in urban planning"*.

Current Events

This ruling offers particularly relevant insights in connection with the ongoing judicial investigations involving the Municipality of Milan and, by extension, with the national debate on the draft law no. S.1309, entitled *"Provisions for the Authentic Interpretation in Urban and Building Matters,"* already approved by the Chamber of Deputies and currently under review by the Senate's Eighth Standing Committee (the so-called *Salva Milano* law).

In this context, the Constitutional Court appears to offer implicit support for the actions of the Milan Public Prosecutor's Office, which has criticized the *modus operandi* of the municipal administration. The latter had been issuing building permits in derogation of applicable regulations, effectively delegating all evaluations to the Landscape Commission.

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