

## **UNPERMITTED CONSTRUCTION: AUTHORITY AND LATENESS OF THE MEASURE**

With its ruling No. 5318 of 18 June 2025, the Council of State is in line with the consolidated administrative case law regarding unpermitted construction. It reaffirms, on the one hand, the Municipality's authority in relation to the construction activities, even those concerning cultural heritage sites, and, on the other, the liability of the owner even if he is not the material executor of the violations, also when it dates back to a long time ago.

### **The case**

In the particular case, a private citizen had challenged the Municipality's measure ordering the restoration of a mezzanine level built without the required building permits in the historic centre, in a protected area. In addition to criticizing the lack of authority, the appellant challenged the order supposing that the property had been built in 1938 and that he was a subsequent purchaser, thus not responsible for the violations.

### **The decision**

The Council of State, upholding the ruling of the first instance judge, affirms the legitimacy of the Municipality's actions.

Regarding authority, it explains that *"the fact that the property falls within a restricted area does not deprive the Municipality of the relevant power to impose sanctions, which compete with the power of the Superintendency without being evidently excluded by it."*

Regarding the owner's liability, it notes first of all that *"the power exercised by the provision concerned is constrained to the removal of the violations, regardless of the time period between their actual construction and their detection, and regardless of their nature."* In fact, the consolidated jurisprudence denies any legitimate reliance and affirms that the constrained nature of the provision concerned does not require specific justification in terms of public interest.

Finally, it reiterates that *"the fact that the violation concerns internal works does not exonerate"* the Municipality from the mentioned case law regarding unpermitted constructions.

### **Conclusions**

This ruling represents a significant warning for those who intend to undertake a real estate purchase transaction. It is essential to seek the advice of qualified professionals in order to duly and diligently verify the urban planning and land registry compliance of the asset being sold. Although this activity may be deemed as an additional financial burden by potential buyers, it actually constitutes a form

of preventive protection, capable of avoiding future legal or financial issues, as well as avoiding unpleasant surprises and unnecessary additional costs.

#### **DISCLAIMER**

The sole purpose of this *Client Alert* is to provide general information. Consequently, it does not represent a legal opinion nor can it in any way be considered as a substitute for specific legal advice.

2

Laura Sommaruga, Partner  
Email: [laura.sommaruga@grplex.com](mailto:laura.sommaruga@grplex.com)

Federico Ianeselli, Senior Associate  
Email: [federico.ianeselli@grplex.com](mailto:federico.ianeselli@grplex.com)

Abdurrahman Gad Elrab, Associate  
Email: [abdurrahman.gadelrab@grplex.com](mailto:abdurrahman.gadelrab@grplex.com)