THE LOMBARDY REGIONAL ADMINISTRATIVE COURT (T.A.R.) – MILAN ONCE AGAIN RULES ON THE BOUNDARIES OF DEMOLITION AND RECONSTRUCTION: WHERE THE INTERVENTION ENTAILS A TRANSFORMATION OF THE TERRITORY, IT SHALL BE REGARDED AS NEW CONSTRUCTION (JUDGMENT OF 8 NOVEMBER 2025, NO. 3605)

Factual Background

The case originates from the filing of an application for a building permit concerning an intervention partly classified as building renovation, consisting of the demolition and reconstruction of the pre-existing gross floor area pursuant to Article 3, paragraph 1, letter d), of Presidential Decree No. 380/2001, and partly as new construction, by virtue of the use of equalisation building rights and of the volumetric bonus provided for under Article 12 of Legislative Decree No. 28/2011. In particular, the project envisaged the demolition of the original industrial and tertiary-use building complex, consisting of two interconnected structures, one comprising five above-ground storeys and the other a single-storey unit. In place of the existing structure, the project provided for the reconstruction of a new seven-storey building predominantly intended for residential use, resulting from the merger of volumes previously pertaining to separate structures.

Following a technical assessment, the Municipality issued an initial measure classifying the intervention as new construction. This was followed by an additional measure quantifying the construction contribution and calculating the monetary compensation for the planning standards, applying the criteria governing new constructions.

The aforementioned measures were based on three general acts adopted by the Municipality of Milan, following investigations initiated by the local Public Prosecutor's Office concerning alleged unlawful land subdivision offences.

Specifically, reference is made to Municipal Executive Resolution No. 199 of 2024, by which the Municipality decided, with regard to interventions falling within factual situations analogous to those subject to pending criminal proceedings, for which the building permit has not yet been issued or otherwise has not yet become effective, to temporarily align its administrative activity with the indications inferred from the judge for preliminary investigations involved in such proceedings.

Furthermore, Service Orders No. 3 and No. 4 issued by the Urban Regeneration Department were also of relevance. The former provides for the establishment of an advisory working group tasked with defining, for cases analogous to those under investigation, the parameters and criteria to be followed by the officers in charge of the administrative proceedings. These parameters and criteria were concretely

implemented through Service Order No. 4, which provides that demolition and reconstruction works shall be classified as new constructions where they entail a change in the number of buildings with respect to the one being demolished and where "any trace of the pre-existing building" is lacking.

Grounds of complaint

Under the first ground of complaint, the complainant challenged the classification of the intervention adopted by the Municipality pursuant to Service Order No. 4, which — in the appellant's view — introduced a reinterpretation of the statutory definition of "building renovation" that failed to take into account the literal wording of Article 3, paragraph 1, letter d), of Presidential Decree No. 380/2001, as well as its historical evolution from 2001 to the present day. Reference was made, in particular, to the amendment most recently introduced by Decree-Law No. 76/2020, which included among building renovation works also "the demolition and reconstruction of existing buildings with different shape, elevations, footprint, and volumetric or typological characteristics." The rationale of such provision would be self-evident: to promote urban regeneration by making it concretely achievable.

The complainant also contested the application, to the specific case at hand, of the category of "new construction." According to the complainant, the distinction between building renovation and new construction lies in the fact that new construction presupposes the transformation of the land for the first time, whereas building renovation is characterised by the prior existence of a structure; in the latter case, the transformation of the land has already occurred.

Under the second ground of complaint, it was argued that the Municipality's erroneous classification of the intervention as entirely constituting new construction resulted in an incorrect calculation of the construction contribution, which was not reduced in accordance with the provisions of Regional Law No. 12/2005 applicable to building renovation works.

Under the third ground of complaint, it was further requested that the determination of the service provision requirements be recalculated, taking into account the dual nature of the intervention — partly consisting of demolition and reconstruction with a change of use, and only partly qualifying as new construction — as well as the unchanged gross floor area and the unchanged urban impact of the intervention itself.

The three general and abstract acts mentioned above (namely, Municipal Executive Resolution No. 199/2024 and Service Orders Nos. 3 and 4 issued by the Urban Regeneration Department) were likewise challenged, as they constituted the legal premise of the erroneous classification of the intervention and, in the complainant's view, were inherently capable of producing adverse legal effects. In particular, it was emphasised that the Municipality's decision to establish a temporal distinction — a "before" and "after" — with respect to the Service Order resulted in unequal treatment between building permits issued after its adoption and those already effective prior to it. Only in respect of the former did the Municipality impose the classification of "new construction" even for interventions consisting solely of demolition and reconstruction, thereby triggering the obligation to provide the related territorial endowments.

Lastly, through an additional complaint, the building permit issued by the Municipality was challenged as well, with regards to the part that classified the envisaged building renovation project as a new construction.

The decision of the Regional Administrative Court

To the Court, Resolution No. 199/2024 withstands the grounds of complaint advanced by the complainant. Indeed, it constitutes a political and administrative guidance act through which the governing body of the local authority provided its offices with general criteria and guidelines, with the purpose of temporarily orienting administrative activity towards interpretative approaches to the relevant sectoral rules consistent with those adopted by the ordinary judicial authority and, moreover, shared by the administrative courts themselves. This is based on the premise that, as the same Chamber has previously observed, "it would make no sense to authorise building interventions considered by the criminal court to be in breach of criminal law" (T.A.R. Milan, Section II, 23 July 2025, No. 2757).

That being established, Service Orders Nos. 3 and 4 adopted by the Urban Regeneration Directorate of the Municipality of Milan lawfully gave concrete effect to the guidance established by the aforementioned Resolution. The Court observes that, with specific regard to Service Order No. 4, the latter does not alter the statutory definition of building renovation as set out in Article 3, paragraph 1, letter d), of Presidential Decree No. 380/2001, but merely lays down guiding criteria for classifying an intervention as "new construction" within the meaning of the first paragraph of Article 3, paragraph 1, letter e), of Presidential Decree No. 380/2001, under which "(e) *new construction interventions shall be those entailing building and urban transformation of the territory not falling within the categories defined in the preceding letters […]*".

On this point, the Regional Administrative Court further clarifies that new construction works are identified in the Consolidated Building Act (T.U.E.) in a residual and negative manner. In fact, they consist of interventions entailing a building and urban transformation of the territory which do not fall within the categories listed in Article 3 of the same Act. Since the classification of the intervention to be carried out falls within the competence of the municipal authority, the Panel considers that such activity may — in the exercise of the technical discretion vested in the administration — legitimately include the identification and prior determination of elements enabling the concrete assessment of the "*building and urban transformation of the territory*," in accordance with the primary legislative provisions.

The Court also notes that the Municipality's alignment with the interpretative approach adopted by the Public Prosecutor's Office and by the Investigating Judge (G.I.P.) of Milan was intended precisely to prevent the continuation of established interpretative practices in the fields of building and urban planning from generating further negative repercussions on the city's economic and social fabric, as well as on the municipal administration itself. On these grounds, the change in interpretative orientation, even taking into account the possible implications in terms of unequal treatment, nonetheless appears to be reasonably justified.

In the opinion of the Court, the classification of an intervention as "new construction" must be based on a concrete assessment of the actual impact that the planned

works produce on the territory, where such works result in a substantive and lasting modification of the existing urban layout. It follows that even a demolition and reconstruction intervention, carried out on an area previously occupied by a building, must fall within this category when it entails an objective and significant transformation of the territory. This occurs, in particular, when the new intervention generates an increase in the urban load.

The Regional Administrative Court therefore proceeded to examine the classification of the intervention at issue. It found that, considering the nature of the project, it was evident that the planned works entailed a transformation of the territory compared to the situation determined by the demolished building. This resulted in a substantial increase in the urban load generated by the new construction. Accordingly, even in the presence of a pre-existing structure, the planned development could only be classified as new construction.

With regard to the construction contribution, however, the Court held that the Municipality erred in failing to apply the reduction of the corresponding amount provided for under regional legislation. Indeed, although the intervention was classified as "new construction", it was to be carried out through demolition and reconstruction works expressly contemplated by the regional provision for the purpose of applying the reduction.

Finally, as to the determination of the urban planning standard, the T.A.R. confirmed the correctness of the application of the parameters set forth by law and by the urban planning instruments for interventions qualifying as new construction.

Final considerations

In conclusion, the judgment under examination constitutes a further contribution to the interpretative framework developed by administrative case-law concerning building renovation through demolition and reconstruction. It confirms the necessity of an actual continuity requirement between the pre-existing building and the newly constructed one, as a decisive element for distinguishing renovation works from new constructions. The decision reiterates, in particular, that where an intervention entails an objective and substantial transformation of the territory, resulting in a renewed urban load with no correlation to the pre-existing development, the very prerequisite of continuity required by law ceases to exist. It follows that the intervention can no longer be classified as renovation, but must be subsumed under the category of new construction. This interpretation is broadly consistent with that expressed by the Council of State in its judgment No. 8542/2025 (see Focus No. 21/2025), which stated that "*the requirement of continuity with the pre-existing building, if understood in absolute terms, finds no basis in the current wording of the provision, which was amended by the legislature in 2020 with the intention […] of including, for non-protected buildings, any demolition and reconstruction intervention even with characteristics markedly different from the previous one, subject only to the volumetric limitation […]. In accordance with the principle of legality enshrined in Article 97 of the Constitution and in light of the current text of Article 3 of the Consolidated Building Act, in demolition and reconstruction works continuity between the new and the previous building may only be required to the extent that it concerns the necessary conditions of unity of the building subject to the intervention, simultaneity between demolition and reconstruction,*

and the mere use of the pre-existing volume without further transformations of the morphology of the territory."

Laura Sommaruga, Partner
Email: *laura.sommaruga@grplex.com*

Federico Ianeselli, Senior Associate
Email: *federico.ianeselli@grplex.com*

Sandra Sacchi, Junior Associate
Email: *sandra.sacchi@grplex.com*