

MILAN'S URBAN PLANNING AND THE PUBLIC PROSECUTOR'S GUIDELINES: THE REGIONAL ADMINISTRATIVE COURT OF LOMBARDY CONFIRMS THE LAWFULNESS OF THE MUNICIPALITY'S PRECAUTIONARY APPROACH

By judgment no. 1157/2026, the Regional Administrative Court for Lombardy (Milan) dismissed the complaint brought by a real estate company challenging the decision of the Municipality of Milan to reclassify a building intervention, aligning with the restrictive interpretation of the applicable legislation that had emerged in the context of the Public Prosecutor's Office investigations.

The dispute originated in 2023, when a real estate company filed a Certified notice of commencement of activity ("SCIA"), pursuant to Article 23 of Presidential Decree no. 380/2001, concerning the implementation of a development project classified as building renovation under Article 3(1)(d) of said decree, consisting of the demolition and reconstruction of the existing gross floor area (GFA).

Namely, the project entailed the full demolition of three buildings hosting offices and the construction, in their place, of a new building composed of eight above-ground floors and two underground levels, to be intended for residential use.

In 2024, after the Municipality of Milan adopted a temporary set of planning and building rules—introduced by Municipal Executive Resolution no. 199/2024 and implemented through Service Orders no. 3/2024 and no. 4/2024—the municipal offices invited the company to convert the SCIA filed in December 2023 into an application for a building permit, reclassifying the project as a "new construction" using the pre-existing GFA.

The company complied with the Administration's request and filed an application to reclassify the SCIA as a building permit for a new construction intervention. However, it expressly stated that this compliance did not imply consent to the different urban planning classification, reserving the right to challenge it before the Regional Administrative Court (TAR).

In its complaint, the company challenged the lawfulness of Municipal Executive Resolution no. 199/2024, arguing that the measure had arbitrarily and temporarily altered consolidated interpretative practices in the field of building regulation, thereby giving rise to unequal treatment among operators in the sector. According to the complainant, this interpretative shift had been further consolidated in the subsequent Service Orders no. 3/2024 and no. 4/2024, which allegedly directed municipal offices to unlawfully classify similar interventions as "new constructions".

The Regional Administrative Court, however, recalling an interpretative approach

already adopted by the same Section, held the objections raised by the claimant to be ungrounded.

According to the Court, the Municipal Executive Resolution no. 199/2024 constitutes a lawful act of political-administrative direction, adopted on a precautionary basis in a context of significant uncertainty arising from following the initiation of criminal investigations by the Public Prosecutor's Office of Milan concerning numerous building interventions.

In that context, the decision of the governing body to temporarily guide administrative activity in light of the indications of the judicial authority does not amount to an uncritical acceptance of the prosecution's allegations; on the contrary, it represents a legitimate and prudent exercise of the functions of political-administrative direction and oversight entrusted to governing bodies, and falls within the scope of the Municipality's administrative discretion.

The Court further observed that the apparent unequal treatment between effective building titles and pending proceedings is justified by the need to prevent further exposure to criminal liability—both for private operators and municipal officials—as well as negative consequences for the activity of municipal offices, the construction sector and the Milan real estate market, as well as potential prejudice to the interests of private parties who rely on the possibility of using the completed real estate units as dwellings or workplaces.

The Court also held that Service Order no. 4/2024, in setting out stricter interpretative criteria for distinguishing between "building renovation" and "new construction", does not result in an infringement of Article 3 of Presidential Decree no. 380/2001, which sets out the general definitions of the different categories of building intervention.

Conversely, the Regional Administrative Court noted that the category of "new construction" is therein defined in residual terms, meaning any building or urban transformation of land that does not fall within the other types of intervention. Accordingly, the identification of guiding criteria by the Administration serves as a useful tool for guiding the exercise of technical discretion in applying the provision.

From this perspective, the contested Service Order merely predetermines interpretative parameters to identifying those cases in which a demolition and reconstruction intervention exceeds the limits of building renovation, resulting in an urban transformation significant enough to require its classification as a new construction.

Moreover, it is worth noting that such criteria — namely, the modification of the number of buildings and the absence of any "trace" of the original structure — had already been established in the case law of the Council of State as elements showing that the continuity between the pre-existing building and the new construction is interrupted, thereby justifying the reclassification of the intervention.

In light of the foregoing considerations, the Court concluded that the grounds of complain raised by the company were ungrounded and confirmed the lawfulness of the contested measures.

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3

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