

RESIDENTIAL BUILDING WITHIN THE COURTYARD OF VIA FAUCHÉ: THE REGIONAL ADMINISTRATIVE COURT FOR LOMBARDY–MILAN UPHOLDS THE UNLAWFULNESS OF THE BUILDING INTERVENTION AND CONFIRMS THE DEMOLITION ORDER.

1. Factual background

By Judgment No 3058 of 10 June 2026, the Second Section of the Regional Administrative Court for Lombardy–Milan ruled on the action brought in January 2026 by the company responsible for the demolition and subsequent reconstruction of the building located within an internal courtyard in Via Fauché, Milan. Namely, the complainant demanded the annulment of the demolition order concerning the works carried out, adopted in implementation of Judgment No 8542 issued by the Council of State, published on 4 November 2025.

The development project concerned, in particular, the demolition of a workshop consisting of two building volumes and the subsequent reconstruction, in its place, by means of a certified notice of commencement of work (SCIA) alternative to a building permit pursuant to Article 23 of Presidential Decree No 380/2001, of a two-storey residential building above ground level, including basements and an underground garage providing seven parking spaces.

By Judgment No 2353 of 7 August 2024, the same Second Section of the Regional Administrative Court for Lombardy–Milan had already ruled on the matter. The Court held that the proposed building had a gross floor area and a height exceeding those of the pre-existing structure, excluding the unlawfully constructed portions, and that the company should have obtained a building permit, which could not be replaced by a SCIA pursuant to Article 23 of Presidential Decree No 380/2001, given the absence of the requirement of “continuity” between the demolished building and the reconstructed structure.

Subsequently, by the aforementioned judgment, the Council of State upheld the decision of the Regional Administrative Court, ruling that the development could not be classified as a building renovation and had instead to be regarded as a new construction. In particular, there was no simultaneity between the demolition and the reconstruction. Furthermore, the development merged several pre-existing structures into a single building volume. Lastly, the works altered the physical layout of the site by incorporating the volume of the ancillary structures into that of the main building, thereby resulting in a non-neutral impact on the territory.

Following the judgments of the Regional Administrative Court and the Council of State, the Municipality of Milan ordered, pursuant to Article 31 of Presidential

Decree No 380/2001, the demolition of the works carried out on the basis of the aforementioned SCIA alternative to a building permit. The company subsequently brought an action against that order, giving rise to the present proceedings.

2. The judgment of the Regional Administrative Court

By the judgment under review, the Regional Administrative Court for Lombardy–Milan confirmed the legitimacy of the demolition order and found that the development carried out by the company was unlawful under the applicable planning and building legislation.

First, it was held that the pecuniary sanction provided for in Article 38 of Presidential Decree No 380/2001 could not be applied in place of the demolition measure. It held that such a sanction may be imposed only where the underlying defects are of a procedural or formal nature and not where, as in the present case, they are substantive defects affecting the structural and essential characteristics of the development.

With regard to the same provision, the Court also rejected the argument that restoration of the site to its original condition was technically impossible, as well as the alleged existence of risks to public or private safety. It further observed that the building was entirely unlawful and autonomous in nature, with the result that its demolition was both possible and mandatory.

Moreover, the Court held that the amnesty building permit provided for under Article 36 of Presidential Decree No 380/2001 was not applicable. That provision requires compliance with the principle of double conformity, meaning that the development must comply with the planning and building legislation in force both when the works are carried out and when the application is submitted. That requirement was not satisfied in the present case.

In addition, it was observed that, even if the company had applied for a building permit, the issues relating to the developability of the site and the construction of a new building within an area used as a courtyard would nevertheless have remained. Namely, the development could only have benefited from the plot ratio (IT) of 0.35 sq m/sq m applicable to new developments, and not from the development rights derived from the buildings previously demolished.

Finally, the Court declared inadmissible the complainant's request to amend the original project in order to remove the alleged irregularities. Once the building permit authorising the development was no longer valid, the unlawfulness necessarily extended to the works as a whole. The legal framework does not provide for regularisation through partial demolition of unlawful works, nor does it allow the addressee of a demolition order to determine which parts are to be removed and which are to be retained.

3. Concluding remarks

It follows that the Regional Administrative Court, having regard to its prior findings

in the present proceedings, upheld the unlawfulness of the development at issue, holding that the conditions required for the regularisation of the planning infringement were not satisfied, whether by way of partial demolition or through the submission of an alternative project proposal.

Consequently, the building under construction at Via Fauché 9 shall be subject to a complete demolition order, with the site to be reinstated to its pre-existing condition.

The judgment brings to an end, at first instance, proceedings which are likely to be carried before the Council of State on appeal and which fall within the broader context of urban development investigations in Milan.

The approach adopted by the Regional Administrative Court aligns with the case-law of the Council of State concerning the distinction between building renovation and new construction. According to such jurisprudence, in order for an intervention of “demolition and reconstruction” to qualify as renovation, a requisite element of continuity between the pre-existing structure and the new building must be preserved. This condition is expressed in the unitary character of the building affected by the intervention, the simultaneity of demolition and reconstruction, and the mere use of the existing volume, without further alteration of the site.

However, it should be noted that an alternative strand of case-law of the Council of State has also emerged, most recently reaffirmed in Judgment No 4155 of 22 May 2026, according to which the notion of building renovation may extend to interventions involving profound transformation of the pre-existing structure, including demolition and reconstruction accompanied by a different spatial siting and altered architectural and volumetric characteristics of the new building, even in the absence of any continuity with the original asset. This divergence gives rise to potentially non-univocal interpretative approaches, which remain subject to further evolution and will continue to be monitored.

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