

DEMOLITION ORDER AND ACQUISITION OF PROPERTY INTO MUNICIPAL OWNERSHIP: IT IS UNLAWFUL TO RECTIFY THE DEMOLITION ORDER AND SIMULTANEOUSLY ADOPT THE ACQUISITION MEASURE

1. Factual background

On 11 June 2026, the Council of State issued its judgment no. 4699 on the unlawfulness of the conduct of a municipal administration which had concurrently rectified a demolition order concerning unlawful building works, established non-compliance with the relevant order, and issued a measure ordering the acquisition of the relevant area into municipal ownership.

The case originates from the submission of a DIA (Notice of Commencement of) concerning extraordinary maintenance works on a rural building consisting of two above-ground floors and an appurtenant area, located in the Municipality of Carrara.

Following an on-site inspection, the Municipality of Carrara established the execution of unauthorised building works and issued a demolition order. In particular, the Administration alleged the expansion of the building and the change of intended use from an agricultural outbuilding to a residential dwelling, in the absence of the necessary building permit pursuant to Article 78 of Regional Law of Tuscany No. 1/2005 and of the landscape authorisation pursuant to Article 146 of Legislative Decree No. 42/2004.

Subsequently, the Municipality proceeded to rectify the demolition order solely with regard to the allegation concerning the breach of the landscape protection constraint. Nevertheless, a measure ascertaining non-compliance with the demolition order was issued, together with a consequent order providing for the acquisition of the area into municipal ownership.

The complainants challenged those measures, arguing that the Municipality had acted unlawfully by upholding a demolition order that was only partially valid. They further contested that, following the rectification of the original order, the Administration was required to grant a new deadline for voluntary compliance and therefore could not declare non-compliance on the basis of the previously assigned time limit.

2. The first-instance judgment

In its judgment of first instance, the Regional Administrative Court rejected the complaint raised by the applicants, holding that the Municipality, by rectifying the demolition order, had not exercised its sanctioning power anew, but instead had

merely corrected the content of the previous measure. The Court further considered irrelevant the objections concerning the existence of the landscape constraint, noting that the demolition order was justified by the fact that the works had been carried out without the required building permit.

As for the declaration of non-compliance with the demolition order and the consequent acquisition of the property into municipal ownership, the Court held that both measures were mandatory consequences of the failure to comply with the demolition order.

3. The decision of the Council of State

The Council of State reached a different conclusion, overturning the first-instance judgment insofar as it had considered lawful the rectification of the demolition order and the ensuing declaration of non-compliance and acquisition of the property into municipal ownership.

In particular, the Council of State reaffirmed the settled case law according to which, in the field of building offences, the acquisition into municipal ownership provided for by Article 31 of Presidential Decree No. 380/2001 constitutes an automatic legal effect of non-compliance with the demolition order. It follows that the relevant measure does not require any autonomous statement of reasons, as such reasoning may be incorporated by reference from the demolition order, provided that the latter contains the necessary elements for identifying the area subject to acquisition.

In this case, however, the demolition order did not contain sufficient information to support the subsequent acquisition of the property. Moreover, the declaration of non-compliance did not simply acknowledge the failure to comply with the demolition order, but at the same time modified the order through a rectification.

On that basis, the Council of State concluded that, once the defects in the original order had been identified, the Administration should have issued a new order and granted a new deadline for compliance. Only after a further failure to comply, the Administration would have been entitled to declare such non-compliance and order the consequent acquisition of the relevant areas into the municipality's inalienable assets.

According to the Council, it is not permissible to adopt, at the same time, a measure rectifying a demolition order and a measure declaring non-compliance, followed by the acquisition of the area into municipal ownership. Such measures are regarded by the legislature as autonomous and distinct, both from a functional and logical perspective and from a chronological one and therefore require a sequential procedure.

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