

ORIGINAL BUILDING PERMIT NO LONGER AVAILABLE: THE DEMOLITION ORDER IS UNLAWFUL WITHOUT A PROPER ASSESSMENT OF THE PROPERTY'S LAWFUL STATUS

1. Factual background

On 23 June 2026, the Regional Administrative Court for Veneto (T.A.R. Veneto) issued its Judgment No 1389 concerning an action for the annulment of a demolition order relating to four portions of a property subject to landscape protection pursuant to Legislative Decree No 42/2004.

The enforcement proceedings originated from the authority's finding that several building structures adjoining the main building, together with ancillary structures located in the western corner of the plot, had been constructed without landscape authorisation and without a building permit.

During the administrative proceedings, the applicants submitted a request for the proceedings to be discontinued, accompanied by documentation intended to establish the planning and building lawfulness of the property. In particular, they provided the occupancy certificate, showing that the building had been constructed pursuant to a building permit issued in the same year. They also submitted a statutory declaration in which the declarant stated that, to the best of his recollection, the condition of the property corresponded to that existing in the early 1950s, when he had lived there. Several photographs dating from the same period, depicting some of the portions of the building challenged by the municipal authority, were attached in support of that declaration.

Although the Municipality confirmed that a building permit had been issued in 1924, it stated that neither the permit nor its accompanying drawings could be retrieved in its archives. It nevertheless maintained that the cadastral plans of May 1951 revealed that the property had been enlarged beyond its original configuration. Based on those findings, the Municipality adopted the contested demolition order.

2. The judgment of the Regional Administrative Court

The Court first observed that the municipal archives contained documentary evidence confirming the issuance of the building permit in 1924 and, in the same year, of the occupancy certificate. According to the Court, those documents constituted significant documentary evidence of both the existence of the building permit and the period in which the property had been constructed.

The municipal authority, however, failed to take that documentary evidence into account, basing its conclusion that the works were unlawful exclusively on the cadastral plans. Those cadastral plans not only failed to permit any comparison with the original approved project, but also displayed inconsistencies, as evidenced by the discrepancies between the 1951 and the 2017 cadastral plans as regards the size and configuration of the building. The Municipality therefore relied on evidence of limited probative value, without properly assessing the documentary evidence submitted by the applicants.

In the light of the above, the Court held that the contested demolition order was vitiated by an inadequate statement of reasons. While reiterating that such an order is not subject to a particularly onerous duty to state reasons, the Court emphasised that it must nevertheless contain a precise description of the allegedly unlawful works, establish that they were carried out in the absence of, or in breach of, the relevant building permit, and identify the legal basis on which it is founded.

Lastly, the Court endorsed the applicants' interpretation of Article 9-bis(1-bis) of Presidential Decree No 380/2001, according to which, where a property was constructed at a time when no building permit was required, its lawful status may be established on the basis of the original cadastral records or other documentary evidence, such as photographs, cartographic extracts, archival documents or other public or private documents of established provenance, together with the building permit governing the most recent works affecting the property or the individual real estate unit as a whole, supplemented by any subsequent building permit authorising partial works.

The Court further clarified that the same provision also applies where there is evidence of the existence of a building permit, even though neither a copy of the permit nor its identifying details are available. In the present case, the Court found that such *prima facie* evidence was provided by the documentation submitted by the applicants, including the occupancy certificate, the documents retrieved from the municipal archives and historical family photographs, which were considered capable of establishing the configuration of the property at the relevant time.

3. Concluding remarks

The judgment establishes the principle that a demolition order adopted pursuant to Article 31 of Presidential Decree No 380/2001 is unlawful where it concerns a property in respect of which the prior existence of a building permit has been unequivocally established although the permit is no longer available, if the administrative authority fails properly to assess the evidence submitted by the owner demonstrating that the contested works pre-date the alleged infringement and instead bases its determination that the works are unlawful on partial and inconclusive evidence.

In such circumstances, the demolition order is vitiated by inadequate reasoning as it fails to provide a complete description of the allegedly unlawful works, to establish that they were carried out in the absence of, or in breach of, the relevant building permit, and to identify precisely the legal basis on which the order is founded.

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.

3

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

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