

UNAUTHORISED BUILDING WORKS IN PROTECTED AREAS: OVERALL ASSESSMENT OF THE WORKS, LANDSCAPE PROTECTION AND LIMITS TO THE SUBSTITUTION OF DEMOLITION WITH A PECUNIARY PENALTY

1. Factual background

On 17 July 2026, the Council of State issued its Judgment No. 5849 concerning an appeal against a demolition order requiring the addressee to demolish, within 90 days, building works found to have been carried out without the requisite planning permission.

In the demolition order, the municipal authority found that the building, located within an area subject to landscape protection pursuant to Legislative Decree No 42/2004, had been constructed in breach of the building permit issued in 1968. In particular, when compared with the approved design, irregularities were detected in the building's planimetric and volumetric configuration, while additional works, including retaining walls, stairways and paved surfaces, were found to have been carried out within the appurtenant area.

The owner of the property subsequently brought an action before the Regional Administrative Court for Lazio, arguing that the internal works had not resulted in any increase in the building's volume, while the external works consisted merely of cavities, extraordinary maintenance works and appurtenant structures. It was further contended that the demolition order failed to state adequate reasons, as it did not specify the actual harm caused by the works and the public interest justifying their demolition, particularly in light of the considerable period that had elapsed since their completion. Lastly, it was submitted that the demolition order should have been replaced with a pecuniary penalty, pursuant to Article 34(2) of Presidential Decree No 380/2001.

By Judgment No 10717, published on 19 June 2024, the Regional Administrative Court for Lazio dismissed the action. First, it stated that the works carried out without the requisite building permit had resulted in the construction of a building substantially different from that authorised, thereby resulting in a non-compliance with the approved project and justifying the demolition measure provided for in Article 31(1) of Presidential Decree No 380/2001. Moreover, since the works had altered the external appearance of a property subject to landscape protection, the demolition order was also required pursuant to Articles 149(1)(a) and 167(4) (a) of Legislative Decree No 42/2004. Lastly, it held that the lapse of time and considerations relating to the public interest were of no relevance, given the objective and mandatory nature of the demolition order.

2. The decision of the Council of State

By the judgment under examination, the Council of State confirmed the findings

set out in the judgment of the Regional Administrative Court.

First, it held that, where an area is subject to landscape protection, any building works which may alter the existing state of the site must be preceded by a landscape authorisation, the absence of which justifies the adoption of a demolition measure.

Furthermore, the Court reiterated the principle that, where an intervention consists of several works - particularly in areas subject to protection under Legislative Decree No 42/2004 -, those works must be considered as a whole, rather than individually and separately. Indeed, only an overall assessment of the works, taking into account their cumulative effects, makes it possible to determine the actual harm caused to the lawful urban development of the territory. In the present case, the Council of State concluded that the building works carried out, taken as a whole, had caused a significant alteration of the territory, in breach of the original building permit, particularly in view of their impact on an area subject to landscape protection.

Lastly, as regards the application of the pecuniary penalty provided for in Article 34(2) of Presidential Decree No 380/2001, the Council of State held that the possibility of imposing that penalty in place of the demolition measure is to be assessed only at the enforcement stage, after the demolition order has been issued. Accordingly, the failure to consider that possibility cannot affect the legality of the demolition order, but may only be relevant at a later stage, when the consequences of non-compliance with that order and the effects of demolition on lawfully carried out works are assessed.

3. Concluding remarks

By the judgment under examination, the Council of State reiterated several fundamental principles concerning the demolition of unauthorised works. First, where several interventions have been carried out without the required building permit, they must be assessed as a whole rather than individually. The unlawful building works cannot be artificially divided in order to circumvent the application of the demolition measure. Furthermore, the judgment emphasised the need to protect the landscape in the context of unauthorised building works, stating that any intervention capable of altering the existing state of the site must be preceded by prior landscape authorisation in order to be lawful and not subject to a restoration measure. Lastly, the Court clarified that the pecuniary regularisation provided for in Article 34(2) of Presidential Decree No 380/2001 only concerns the enforcement stage of the demolition order and does not affect its legality.

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