

LAWFUL STATUS OF PROPERTIES CONSTRUCTED PRIOR TO 1967: THE COUNCIL OF STATE RULES OUT RELIANCE ON COMPARISON WITH A BUILDING TYPOLOGY

On 21 September 2026, the Council of State issued its Judgment No. 6972, holding that, for the purposes of certifying the lawful status of a property constructed before the introduction of the requirement to obtain a building permit, which took effect on 1 September 1967 following the entry into force of Law No. 765/1967, compliance with planning and building regulations must be assessed by reference to the specific structure under examination and its actual characteristics. The mere fact that the structure may be regarded as falling within a particular building typology cannot, in itself, be determinative of its planning and building lawfulness.

1. Factual background

The dispute arose from a farmhouse constructed by the Agency for Land and Agricultural Development in Sardinia in the late 1950s. In the following decades, the Municipality granted two further building permits in respect of the same property. The first, issued in 1982, authorised an extension and included a report setting out in detail the existing volumes. The second, issued in 1989, authorised works for land improvement, namely the installation of an oxidation sewage treatment system. These permits were followed by a 2023 notice of commencement of works (CIL) for ordinary maintenance works and a 2024 CIL for extraordinary maintenance works. Both notices covered the entire building and concerned the complete refurbishment of all internal areas and the renovation of the external perimeter walls. In 2025, upon completion of the works, the appointed professional submitted a certified notice of occupancy. The Municipality declared the notice ineffective by means of the decision challenged in the proceedings at first instance.

The declaration of ineffectiveness was based on the fact that, in the plans attached to the 1989 building permit, the existing buildings were shown as having a configuration, floor areas and volumes different from the abstract model of the rural buildings constructed by the Reform Agency in 1959. In particular, the Municipality did not challenge the building's non-compliance with the original structure. Rather, it maintained that the existing building differed from the architectural typologies on which, according to a study commissioned by the Municipal Administration in 2024, the rural buildings constructed by ETFAS in the 1950s were generally based.

2. The Council of State's decision

The Court relied on Article 9-bis(1-bis), final part, of Presidential Decree No. 380/2001, introduced by Decree-Law No. 76/2020 (the so-called "*Decreto Semplificazioni*") and subsequently amended by Decree-Law No. 69/2024 (the so-called "*Decreto Salva-Casa*"). Under that provision, in the case of properties constructed at a time when obtaining a building permit was not mandatory, their

lawful status may be established on the basis of the information contained in the original cadastral records or other supporting evidence, including photographs, cartographic extracts, archival records or any other public or private document whose provenance has been established, together with the building permit governing the last building works affecting the entire property or unit, supplemented, where applicable, by any subsequent permit authorising partial works. The same provisions also apply where there is evidence that such building permit existed, even though neither a copy nor its particulars are available.

It was therefore held that the “supporting evidence” referred to in the provision in question relates not to a historical or architectural typology, but to the specific property whose lawful status must be established. Where such evidence is available, it must be read in conjunction with the building permit governing the most recent works carried out on the entire property or unit, together with any subsequent permissions authorising partial works.

Following the approach adopted in an earlier ruling (Council of State, 12 May 2026, No. 3744), the Court further confirmed that the consistent and coherent conduct of the public administration over time may also constitute evidence of lawful status, in particular, through the grant of building permits which presuppose the conformity of the structure. In such circumstances, an authority seeking to deny the lawfulness of the structure must provide specific and cogent reasons.

In the present case, the appellant had produced a number of planning permissions relating to the property complex in question, all of which had been duly examined and granted by the competent authority. In particular, the 1982 and 1989 permits were accompanied by technical reports setting out the planimetric and volumetric data of the existing structures. Their correspondence with the actual characteristics of the properties was not disputed. Moreover, those documents were not mere graphical representations of the property, devoid of evidential value for the purposes of establishing its lawful status. Rather, they accurately recorded the existing volume. Nor had any prohibitory measure been issued in respect of the more recent applications submitted in 2023 and 2024 concerning maintenance works. Ultimately, the authority had, on several occasions, processed building applications relating to the same property complex without ever identifying any inconsistency between the structures shown therein and their original characteristics.

The grounds relied upon by the Municipality for declaring the notice ineffective were based exclusively on a comparison between the existing structure and a construction “model” recently identified by the authority, on the basis of research conducted in the historical archives of the Agency for Land and Agricultural Development. In the Council of State’s view, however, such reasoning, being merely hypothetical, was insufficient, in itself, to establish either the unauthorised nature of the works carried out or their non-conformity with the works originally approved, in light of the numerous permits granted over the years in respect of the same property complex.

3. Concluding remarks

The judgment establishes that, in challenging the lawfulness of a structure constructed before the introduction of the requirement for a building permit, the

authority must first examine the specific structure in question and identify any discrepancies. The grounds for such challenge cannot be based solely on the building's conformity with a particular model or typological archetype. Indeed, the public administration's duty to give reasons and adduce evidence assumes particular significance where the same Municipality has, over an extended period, granted building permits in respect of the same property complex without raising any objection to the lawfulness of the structure.

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