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Ex Officio Annulment of Administrative Acts for False Representation of Facts

Council of State (Consiglio di Stato), Judgment no. 1515/2026: false representation of facts overrides the statutory time-bar on administrative self-redress without requiring a prior final criminal conviction

PV Paola De Virgiliis Administrative Law & Administrative Procedure 13 November 2026

Reading time 8 min

Current Legal Framework as of 6 November 2026: settled administrative case law on exceeding the statutory deadlines set forth in Article 21-*nonies* of Law no. 241/1990 in the presence of deceptive conduct by the private applicant.

ABSTRACT

Under the public-law framework established by Article 21-*nonies* of Law no. 241 of 7 August 1990, the expiry of the **statutory forfeiture deadline** (*termine di decadenza*) for exercising administrative self-redress does not preclude the **ex officio annulment** of a favorable administrative measure vitiated by a **false representation of facts** attributable to the private applicant. This temporal derogation operates even in the absence of a **final criminal conviction** (*res judicata*), insofar as the public authority's intervention pursues the objective restoration of legal order and entails a corresponding **attenuation of the duty to state reasons**, given the impossibility of configuring blameless legitimate expectations on the beneficiary's part.

Key Takeaways

- **Overriding the statutory time-bar:** the existence of documentary and factual elements diverging from material reality authorizes ex officio annulment beyond ordinary statutory deadlines, without any obligation to await the outcome of criminal proceedings.
- **Enforceability against successors in title:** the restoration of the breached urban planning and building order possesses an *in rem* legal nature and prevails over the position of subsequent purchasers or donees of the unlawful property.
- **Absence of protectable legitimate expectations:** a private party who misleads the public administration through fallacious representations cannot invoke the protection of consolidated expectations, thereby easing the authority's burden of reasoning.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Administrative Law & Administrative Procedure

LEADING DECISION
Council of State (Consiglio di Stato), Judgment of 3 December 2025 (filed 2026), no. 1515 — Administrative self-redress in buil

Legal Principle / Editorial Headnote

In matters of administrative self-redress (autotutela) concerning building permits, exceeding the maximum statutory time limit prescribed by Article 21-nonies of Law no. 241 of 1990 is lawful whenever the private party has portrayed a material reality diverging from the actual state of affairs, including by omitting essential elements through reticence. The applicability of this statutory derogation presupposes neither an irrevocable criminal conviction nor a punitive intent on the part of the public entity, as it is directed toward the prompt and mandatory restoration of breached legality, in view of which the administration's duty to give reasons is fully satisfied by specific reference to the documented factual and evidentiary discrepancies.

01. EX OFFICIO ANNULMENT FOR FALSE REPRESENTATION: TEMPORAL SCOPE AND SUBSTANTIVE PREREQUISITES

The institution of **ex officio annulment for false representation of facts** represents one of the most intricate focal points of second-instance administrative decision-making, situated at the delicate point of friction between the **principle of legality** and the imperative need to safeguard the **certainty of legal relationships**. In calibrating the power of administrative withdrawal governed by Article 21-*nonies* of Law no. 241 of 7 August 1990, the Italian legislature progressively shortened the **statutory forfeiture period** (*termine di decadenza*) within which the public administration may set aside **unlawful favorable administrative measures**, initially setting that ceiling at eighteen months and subsequently contracting it to **twelve months**. Such a chronological time-bar responds to the systematic objective of consolidating **subjective legal positions** arising from beneficial measures, thereby preventing the belated exercise of **discretionary administrative power** from translating into an unforeseeable detriment to addressees of public action.

Nevertheless, the temporal strictness imposed by Article 21-*nonies*, paragraph 1, undergoes an **express statutory derogation** whenever an enabling title has been obtained through a **deceptive alteration** of the factual record submitted to the proceeding authority. Specifically, **paragraph 2-*bis*** of the same provision establishes that **administrative measures obtained** on the basis of an **untruthful representation of facts** or false or mendacious substitute declarations may be annulled even after the expiration of the ordinary statutory deadline. The legal system thus precludes the interested party from taking advantage of the **strict temporal time-bar** where the issuance of the favorable act depended decisively on a **vitiating factor** attributable to that party's own conduct.

1.1 — The Statutory Framework of Article 21-nonies and the Evolution of Temporal Limits

The architecture of Article 21-*nonies* reflects a **legislative design** aimed at confining **administrative discretion** within strict bounds of timeliness. The introduction of a **maximum statutory deadline** for **authorizing measures** or acts granting economic advantages sought to implement supranational legal principles concerning the **stability of favorable legal positions**. Yet such stability presupposes that the **original fact-finding investigation** took place on the basis of an uncorrupted informational record. When the public entity's determination is distorted or deflected by **elements that do not correspond to reality**, the protection of private expectations yields before the overriding requirement to restore

breached legality, as confirmed by the Council of State (*Consiglio di Stato*) in Judgment no. 1515/2026[1] with respect to a **building permit** issued on the strength of manifestly untruthful **cadastral and urban-planning representations**.

Viewed from this perspective, the **temporal derogation** does not constitute an isolated exception, but rather a coherent application of the **general principle of self-responsibility** (*autoresponsabilità*). The public administration retains intact its **power-duty to intervene by way of self-redress** (*autotutela*) without being bound by the **twelve-month barrier** whenever the discrepancy between the **actual state of facts** and the authorized configuration emerges from an examination of the **filed documentation** or from **technical inspections** carried out on the site of the works.

1.2 — The Autonomy of False Representation Vis-à-Vis Final Criminal Conviction

The core of this exegetical reconstruction lies in the proper interpretation of **Article 21-*nonies*, paragraph 2-*bis***. A **defense argument** frequently raised in **administrative self-redress litigation** contends that overriding the **ordinary statutory deadline** invariably requires a **prior judicial finding of falsity** by a criminal court, embodied in a **final criminal judgment** having the force of *res judicata*. Such an interpretation would, however, end up **paralyzing administrative action**, subordinating the **protection of the public interest** to the protracted timeframe and outcomes of criminal proceedings, which are governed by **criteria of subjective imputation** and evidentiary standards markedly different from those proper to administrative law.

Administrative case law has clarified the sharp distinction between the **distinct hypotheses contemplated by the provision**. In Judgment no. 3940/2018, the Council of State (*Consiglio di Stato*)[2] conducted a thorough **textual exegesis of the statutory clause**, underscoring how the **disjunctive conjunction** conceptually and grammatically separates **false representations of facts** from false or mendacious substitute declarations. Whereas for the latter category the legislature refers to **conduct constituting a criminal offence** ascertained by a final judgment, the **false material portrayal** of the physical state of the premises possesses an **ontological autonomy** that operates independently of the **criminal relevance of the act**.

It follows that where the administration directly ascertains during its **fact-finding inquiry** a **substantive and decisive discrepancy** between physical reality and the **submitted design plans**, it is fully entitled to **exercise self-redress** without awaiting the determinations of the **criminal courts**. Administrative intervention serves neither a **punitive nor an afflictive function** directed against the applicant personally; rather, it fulfills the **objective institutional aim** of removing the legal effects of an **administrative measure vitiated ab origine** by the untruthfulness of its **underlying factual premises**.

02. BLAMELESS LEGITIMATE EXPECTATIONS AND ATTENUATION OF THE DUTY TO STATE REASONS

2.1 — Preclusion of Protectable Legitimate Expectations on the Beneficiary's Part

The legal regime governing **ex officio annulment for false representation** is closely intertwined with the principles concerning the **protection of legitimate expectations** (*tutela dell'affidamento legittimo*) and the **proportionality of administrative action**. As a rule, a public authority intending to withdraw a **building permit after a substantial lapse of time** must carry out a rigorous **comparative balancing exercise** between the **concrete and current public interest** in restoring legality and the **private party's consolidated expectation**, setting forth express reasons that justify sacrificing the **stability of established legal relationships**.

Yet such a **complex comparative assessment** presupposes that the reliance accrued by the addressee is supported by **good faith and the absence of fault**. Where a **favorable administrative measure** has been procured by misleading the public body through an **untruthful description of the site** or of the nature of the works, the **private party's subjective position** degrades into a mere de facto advantage devoid of **worthiness of legal protection**. As highlighted by the Council of State (*Consiglio di Stato*) in Judgment no. 2207/2021[3], the **principle of self-responsibility** prevents a private applicant from deriving benefit from statements or representations diverging from factual reality, operating in systematic harmony with Article 75 of Presidential Decree no. 445 of 28 December 2000 governing **statutory forfeiture of administrative benefits**.

Under such circumstances, the **duty to state reasons** incumbent upon the proceeding authority is markedly attenuated. Administrative case law, consistent with the principles laid down by the **Plenary Assembly (*Adunanza Plenaria*)**, reaffirms that the **statement of reasons supporting the self-redress measure** may be deemed exhaustively satisfied by **specific and documented reference** to the elements of discrepancy ascertained vis-à-vis the **authorizing record**. Both the gravity and the **self-evident nature of the public interest** in countering **deceptive conduct** absorb any need for a granular **weighing of competing interests**, rendering the **elimination of the unlawful measure** legally mandatory.

03. CRITERIA OF CONDUCT IMPUTABILITY AND THE LEGAL POSITION OF SUCCESSORS IN TITLE

An issue of primary practical significance concerns the **enforceability of the second-instance administrative measure** against third-party **successors in title** (*aventi causa*) deriving their rights from the original applicant. In the dispute decided by Judgment no. 1515/2026, the appellant challenged the lawfulness of the ex officio annulment on the ground that he was **unconnected with the material misrepresentation** committed by his predecessor in title, from whom he had acquired the property by deed of gift. The Council of State (*Consiglio di Stato*) dismissed the plea, reiterating that **administrative self-redress in building matters** does not carry a personal punitive nature, but rather governs the legal status of the property **on an *in rem* basis**. Acquisition **gratuitously or by derivative title** neither cures the original building permit of the misrepresentations that prompted its issuance nor entitles the transferee to assert **legitimate expectations** to shield a legal position resting upon a **misleading factual portrayal**.

> *Ex officio annulment for false representation of facts pursues no personal punitive aim; rather, it restores breached legality with in rem legal effect, enforceable even against gratuitous successors in title.*

A **materially distinct scenario** arises, conversely, where the **unlawfulness of the administrative measure** stems not from any conduct of the private party, but from **criminal offences committed exclusively by disloyal public officials** without the beneficiary's knowledge. Within that setting, the rule allowing **derogation from the statutory deadline** does not apply: in Judgment no. 2971/2021, the Council of State (*Consiglio di Stato*)[4] held that, unlike cases involving mendacity on the applicant's part, the **legitimate expectations of a private party wholly extraneous to the criminal wrongdoing** must be safeguarded, thereby precluding **automatic annulment** years after the grant.

The very same **principles of self-responsibility** govern enabling titles purportedly formed through tacit administrative consent (*silenzio-assenso*) upon incomplete or artfully drafted applications, as examined in our study on the formation of tacit consent on building permits in the face of incomplete documentation. In administrative litigation, defense counsel

must bear in mind that the allocation of the **burden of proof** requires the public administration to allege and substantiate the **objectively decisive relevance** of the omitted or misrepresented circumstances, whereas it falls upon the **private party to demonstrate in court** either the untimeliness of administrative action or the complete absence of any **deceptive contribution**.

04. CONCLUDING REMARKS AND OPERATIONAL IMPLICATIONS FOR LEGAL COUNSEL

The judgment under review consolidates a **rigorous interpretive approach** in the field of **urban-planning and building self-redress**, reaffirming the **primacy of the public interest** in upholding **land-use regulations** against conduct aimed at circumventing statutory requirements. The exercise of the power of **ex officio annulment for false representation** of facts escapes **ordinary statutory forfeiture** precisely because the legal order refuses to shield **advantageous positions acquired** through **decisive artifice or reticence** vitiating the administration's consent.

From an **operational and procedural standpoint**, the conclusions reached by administrative case law provide clear guidance for **litigation strategy**. On the one hand, the public authority bears the burden of setting forth in the **withdrawal order** the specific **factual and documentary circumstances** proving the untruthfulness of the **original representation**, and may not confine itself to boilerplate clauses or mere circumstantial suspicions. On the other hand, **counsel for the private party** cannot effectively rely upon the **mere passage of time** or the absence of an **irrevocable criminal judgment**; rather, defense strategy must focus on demonstrating the **substantive compliance of the works**, the municipal technical office's actual prior knowledge of the **physical state of the premises**, or the lack of deceptive capacity of the documentation submitted.

References & Authorities Cited

Statutory Provisions

- Articles 3 and 21-nonies of Law no. 241 of 7 August 1990 — New rules on administrative procedure and the right of access to administrative documents (Italian Administrative Procedure Act).
- Articles 75 and 76 of Presidential Decree no. 445 of 28 December 2000 — Consolidated Act of legislative and regulatory provisions on administrative documentation.
- Articles 10, 36, and 38 of Presidential Decree no. 380 of 6 June 2001 — Consolidated Act of legislative and regulatory provisions on building and construction.

Case Law Cited

1. **Council of State (*Consiglio di Stato*), Judgment of 3 December 2025 (filed 2026), no. 1515** — Administrative self-redress in building matters, overriding of the statutory forfeiture deadline due to false representation of the physical state of the premises, irrelevance of a prior criminal conviction, and attenuation of the public administration's duty to state reasons. Outcome: appeal dismissed. Para.: 4.1.3. ↑

2. **Council of State (*Consiglio di Stato*), Judgment of 27 June 2018, no. 3940** — Disjunctive interpretation of Article 21-nonies, paragraph 2-bis, of Law no. 241/1990 and autonomy of false representation of facts vis-à-vis an irrevocable criminal conviction. Outcome: appeal dismissed. Para.: 4.6. ↑

3. **Council of State (*Consiglio di Stato*), Judgment of 15 March 2021, no. 2207** — Principle of self-responsibility, application of Article 75 of Presidential Decree no. 445/2000, and impossibility of configuring legitimate expectations in the presence of untruthful declarations. Outcome: appeal upheld in part. Para.: 14. ↑

4. **Council of State (*Consiglio di Stato*), Judgment of 12 April 2021, no. 2971** — Protection of the private party's blameless legitimate expectations and exclusion of the temporal derogation for administrative self-redress where criminal offences are attributable solely to disloyal public officials. Outcome: appeal upheld. Para.: 150. ↑

PV

Paola De Virgiliis

AUTHOR • METODO GIURIDICO

Focuses on public procurement and public contracts. For Metodo Giuridico she curates the analysis of public procurement legislation and related administrative case law.