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Adverse Possession of Easements with Unlawful Structures and Statutory Setbacks

The Autonomy of Private-Law Possession from Public Planning Enforcement under Italian Supreme Court of Cassation, Civil Division, Judgment no. 24767/2026

BT Bruno Taverniti Civil Law & Property & Real Rights 13 November 2026 Reading time 10 min

Current Legal Framework as of 9 November 2026: The Italian Supreme Court of Cassation reaffirms the structural autonomy between real possessory protection and public building control, confirming that an easement infringing statutory setback distances may be acquired by adverse possession (*usucapione*) even in the absence of a building permit.

ABSTRACT

This article examines **Judgment no. 24767/2026 of the Italian Supreme Court of Cassation, Civil Division** concerning the **adverse possession of easements with unlawful structures** built in breach of **statutory setback distances**. It analyses the strict separation between inter-private civil law relations and the public-law sphere of urban planning enforcement, while investigating the subjective limits of acts interrupting possession vis-à-vis omitted co-owners and the inapplicability of **Article 1310 of the Italian Civil Code** to rights *in rem*.

Key Takeaways

- **Autonomy of Private-Law Relations:** The absence of a building permit or planning authorization operates exclusively within the public-law relationship with the municipal administration and does not deprive the structure of its status as a legal asset capable of possession.
- **Original Acquisition of Title:** Acquiring by adverse possession (*usucapione*) the easement to maintain a building at a distance shorter than the statutory minimum presupposes solely the physical existence of visible and permanent works pursuant to Article 1061 of the Italian Civil Code.
- **Subjective Scope of Interruption:** The rules governing joint and several obligations under Article 1310 of the Italian Civil Code do not apply to rights *in rem*; accordingly, a statement of claim served on only some co-possessors fails to interrupt adverse possession as against omitted co-owners.
- **Preservation of Public Enforcement Powers:** The perfection of acquisition by adverse possession between private neighbours neither precludes nor prejudices the repressive and restorative powers vested in the public administration.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Property & Real Rights

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Judgment no. 24767 of 25 August 2026 — Acquisition by adverse possession of a

Legal Principle / Editorial Headnote

Original acquisition by adverse possession of an easement entailing the right to maintain a structure at a distance shorter than the statutory minimum is admissible even where the building is unauthorized under planning law, since the lack of a building permit exhausts its legal relevance on the public-law plane without impairing possession valid ad usucapionem.

01. JUDGMENT NO. 24767/2026 OF THE SUPREME COURT OF CASSATION ON THE PRIVATE-LAW RELEVANCE OF UNLAWFUL BUILDING WORKS

The **Italian Supreme Court of Cassation, Civil Division, Judgment no. 24767/2026**[1] addresses the core question of the **adverse possession of easements with unlawful structures**, clarifying the interplay between breaches of **statutory setback distances** and the absence of a building permit. The appeal before the Supreme Court challenged the appellate ruling that had recognized in favour of the adjoining landowner the original acquisition of the right to keep a building at a distance shorter than that prescribed by local regulations. The appellants contended that a structure lacking urban planning compliance constituted a legal non-entity incapable of forming the object of continuous possession within the meaning of Article 1158 of the Italian Civil Code.

The Supreme Court dismissed the appeal, reaffirming the **strict autonomy** between the civil-law sphere of possession and the **public-law regime** governing building setbacks and administrative permits. The absence of planning authorization does not downgrade the edifice to a legally irrelevant mere fact. In relations between neighbouring landowners, what matters is the physical existence of the work, provided that it is visible, permanent, and unmistakably dedicated to exercising the burden over the adjoining parcel. That material presence grounds the **factual dominion** required *ad usucapionem*, wholly irrespective of the administrative lawfulness of the construction.

The decision also establishes a second procedural milestone of primary significance: the ineffectiveness of an interruptive act vis-à-vis omitted co-possessors. In the domain of rights *in rem*, the principle of **joint and several liability in obligations** enshrined in Article 1310 of the Italian Civil Code has no application. A writ of summons served solely upon certain co-owners does not prejudice the legal position of the remaining co-owners, allowing the twenty-year acquisitive period to mature undisturbed in favour of any party left outside the litigation.

02. ADVERSE POSSESSION OF EASEMENTS WITH UNLAWFUL STRUCTURES BETWEEN PRIVATE-LAW AUTONOMY AND URBAN PLANNING CONTROL

2.1 — The Unlawful Structure as a Legal Asset Capable of Continuous Possession

The central ground of appeal raised against the declaration of adverse possession postulated that a building erected without a planning permit amounts to a bare physical fact. The appellants argued that a structure devoid of urban planning legitimacy operates *tamquam non esset*, unfit to qualify as property in the legal sense under Article 810 of the Italian Civil Code and hence incapable of supporting a legally protected factual control. The **Italian Supreme Court of**

Cassation, Civil Division, Judgment no. 24767/2026[1] refuted that argument, reasserting the systemic autonomy of civil-law possession from building compliance.

Within the framework of property rights, the **adverse possession of easements with unlawful structures** rests upon the tangible and perceptible presence of the building burdening the servient tenement. The neighbour can immediately perceive the existence of the structure and the corresponding encumbrance from the very moment its structural shell is completed. Private law rewards the stability of factual situations maintained over twenty years in the face of culpable inaction on the part of the adjoining owner. Although lacking administrative authorization, the physical work does not vanish on the ontological plane and retains intact its capacity to manifest **continuous and uninterrupted possession**.

The civil legal order pursues the certainty of subjective legal positions consolidated over time. Urban planning irregularity exhausts its impact within the sanctioning relationship between the private citizen and the public administration. No administrative validation or amnesty ensues, yet the adjoining landowner becomes barred from seeking demolition or restoration to the prior state pursuant to Article 873 of the Italian Civil Code. The real right to maintain the building at a reduced setback validly enters the possessor's estate by original title.

> The lack of a building permit exhausts its legal significance in the public-law arena of administrative sanctions without downgrading the structure to a non-asset within the sphere of private-law possession.

2.2 — The Technical Notion of Building and the Bar Against Appurtenance Shielding

Defendants sued for breaching statutory setback limits frequently seek to classify the disputed structure as an appurtenance (*pertinenza*) in an effort to exempt it from the duty to set back. On this point, the **Italian Supreme Court of Cassation, Civil Division, Judgment no. 20490/2026**[2] reiterated that the concept of a **building in the technical sense** is strictly objective in nature. Any work endowed with volumetric substance and permanently anchored to the ground is capable of creating harmful narrow gaps between structures and remains fully subject to the setback distances mandated by the Civil Code or supplementary municipal regulations.

As previously noted with regard to the calculation of balconies for statutory setback purposes, the decisive benchmark under setback rules lies in the volume and spatial footprint of the structure. Neither the ancillary service function of the work nor its construction flush against a boundary wall under Article 878 of the Italian Civil Code carries weight where a building already stands on the neighbouring plot at less than the regulatory distance. The right to build on the boundary line does not permit sacrificing the public health and hygiene rationale underlying minimum distances between buildings.

Characterizing a work as an appurtenance therefore provides no legal shield against a neighbour's claim for setback enforcement. Even so, where the structure remains permanently in place for over twenty years without timely judicial opposition, the *actio negatoria* fails in the face of the perfected acquisition by adverse possession of the corresponding praedial easement. The uniform civil-law notion of a building thus ensures firm coherence between the materiality of possession and the protection of the vested right *in rem*.

03. POSSESSORY REQUIREMENTS, APPARENT NATURE OF THE EASEMENT, AND

EFFECTIVENESS OF INTERRUPTIVE ACTS

3.1 — The Requirement of Apparency and the Unambiguous Functional Destination of Works

Acquiring any praedial easement by adverse possession presupposes the existence of **visible and permanent works** unequivocally dedicated to exercising the burden over the adjoining parcel within the meaning of Article 1061 of the Italian Civil Code. As clarified by the **Italian Supreme Court of Cassation, Civil Division, Order no. 602/2026**[3], the requirement of apparency demands an objective and unmistakable outward manifestation of the encumbrance *in rem*, making it plain to the owner of the servient land that the factual situation rests not upon precarious tolerance, but upon a stable and lasting burden.

Supreme Court case law has specified that the bare existence of a structure or pathway does not suffice; what is needed is a functional element capable of revealing its specific destination for the benefit of the dominant tenement. From this standpoint, as extensively underscored in our study on the adverse possession of vehicular rights of way, the **burden of proof** rests entirely upon the party claiming acquisition by adverse possession. Indiscriminate or generic use of the works rules out at the root the unambiguous character of a praedial encumbrance.

Where statutory setback distances are breached, apparency manifests itself *in re ipsa* through the structural presence of the building standing closer than permitted to the boundary line. Once completed in its structural shell and permanently visible, the building attests by its very existence to the burden imposed on the neighbouring tenement. The **adverse possession of easements with unlawful structures** requires no further indicia of apparency beyond the physical materiality of the edifice, because the volumetric mass of the building renders both the existence of the encumbrance and the breach of setback rules immediately knowable.

3.2 — Peaceful Possession and Inapplicability of Joint Liability under Article 1310 Civil Code to Rights in Rem

The ruling in **Italian Supreme Court of Cassation, Civil Division, Judgment no. 24767/2026**[1] addresses two further defences raised against continuous possession: the alleged lack of peacefulness under Article 1163 of the Italian Civil Code and the interruptive effect of the judicial action originally brought in 1983. Regarding peacefulness, the Court clarifies that the absence of violence must exist at the initial moment when possession is taken. Out-of-court protests and objections raised by the neighbour during the subsequent exercise of possession do not alter the peaceful character of factual control; at most, they may operate as acts interrupting acquisitive prescription if formalized in the manner prescribed by law.

The most far-reaching aspect of the decision concerns the subjective propagation of interruptive acts among co-possessors. In 1983, the claimants had served their writ of summons seeking setback enforcement upon only certain co-owners, failing to implead the remaining *pro indiviso* female co-owners. The Court held that **rights *in rem*** are not governed by the rule on passive joint and several liability laid down for obligations in Article 1310 of the Italian Civil Code. A judicial act of interruption produces legal effects solely vis-à-vis those parties formally summoned before the court.

It follows that possession valid *ad usucapionem* continued without any interruption in favour of the omitted co-owners from the completion of the building's structural shell in 1980. The claim for setback enforcement was extended to those omitted co-owners only in 2002, by which time the twenty-year period had already elapsed in full. The initial omission of a co-owner thus resulted in the extinction of the right to restoration owing to the perfection of original title.

Decision / Authority	Stance	Core Holding
Supreme Court of Cassation, Civil Division, no. 24767/2026	Consistent	Unlawful construction does not bar adverse possession of a reduced-setback easement; interruptive acts under Art. 1310 Civil Code are ineffective against omitted co-possessors.
Supreme Court of Cassation, Civil Division, no. 20490/2026	Consistent	Appurtenance status does not exempt a structure from statutory setback rules between buildings; compensatory damages require specific proof of harm.
Supreme Court of Cassation, Civil Division, no. 602/2026	Consistent	Apparency requires visible and permanent works exhibiting an unmistakable functional link with the dominant tenement, ruled out where use is indiscriminate.

3.3 — When Restorative Relief Applies and Which Defences Counsel Must Raise in Litigation

Restorative relief compelling setback compliance operates in favour of the neighbour provided that judicial proceedings are timely commenced before the twenty-year period expires and served upon all co-owners. Conversely, the completion of the twenty-year term extinguishes the right to restoration to the prior state, defeating the claimant's action upon a defence of adverse possession duly pleaded by the defendant in petitory proceedings.

From the perspective of case-law **distinguishing**, the rule permitting adverse possession of a reduced-setback easement does not apply in **distinct factual scenarios** where the works are purely temporary or precarious, lack volumetric stability, or are inherently designed to be removed. Similarly, the rule does not operate where the breach of setback limits infringes absolute prohibitions on building imposed by special statutes to safeguard public safety or ground stability—situations in which public enforcement powers and the general interest preclude the consolidation of easements contrary to public policy (*ordine pubblico*). Unlike those mandatory public-interest regimes, under ordinary Civil Code setback rules prolonged inaction by the neighbour consolidates the private encumbrance.

On the plane of litigation strategy, counsel representing the owner of the building erected at a reduced distance must discharge the **burden of proof** regarding the certain date on which the structural shell was completed, as that is the moment when the work acquires its definitive volumetric configuration and renders possession manifest. In filing the statement of defence, counsel must timely enter a counterclaim or affirmative defence of adverse possession, carefully verifying any necessary joinder of parties and scrutinizing the subjective scope of interruptive acts served by the claimant.

Conversely, counsel acting for a claimant seeking demolition must accurately identify every co-owner and co-possessor of the neighbouring parcel, serving the writ of summons upon each of them prior to the expiry of the twenty-year period lest adverse possession mature in favour of omitted co-owners. Furthermore, on the compensatory front, counsel cannot merely allege the bare breach of the setback distance, but must adduce specific evidence of the pecuniary loss suffered, in accordance with settled Supreme Court precedent.

Requirements for Adverse Possession and Allocation of the Burden of Proof

Possession valid *ad usucapionem* runs from the completion of the building's structural shell in its stable dimensions. A writ of summons seeking restoration to the prior state must be served on all co-possessors in order to interrupt the acquisitive term, as Article 1310 of the Italian Civil Code does not apply to rights *in rem*.

04. THE DUAL-TRACK PRINCIPLE BETWEEN PRIVATE REAL PROTECTION AND ADMINISTRATIVE ENFORCEMENT POWERS

The outcome reached by the Supreme Court of Cassation reaffirms the full operation of the **dual-track principle** separating private-law protection of property rights from urban planning and building regulation. The **adverse possession of easements with unlawful structures** deploys its preclusive effects exclusively in relations between adjoining landowners. Original acquisition bars the neighbour from demanding the demolition or setback of the building for breach of statutory setback limits, thereby stabilizing the physical state of the premises on the civil-law plane.

Such possessory consolidation confers no stamp of planning legality upon the unauthorized work. Establishing an easement by adverse possession neither regularizes the infringement nor curtails the exercise of sanctioning powers vested in the municipal administration. Pursuant to Presidential Decree no. 380 of 2001, the local authority retains the power and duty to issue demolition orders and impose pecuniary penalties for planning violations, including the gratuitous acquisition of the unlawful structure into municipal property.

Keeping the two spheres distinct reflects a deliberate systemic choice in favour of legal certainty: preventing private litigation from paralyzing or conditioning territorial governance while simultaneously ensuring that twenty years of private inaction are not rewarded with belated restorative relief. Adverse possession secures boundary peace between neighbours, whereas safeguarding the urban planning order remains entrusted exclusively to the enforcement action of public authorities.

References & Authorities Cited

Statutory Provisions

- Italian Civil Code, Article 810 — Legal notion of property and assets
- Italian Civil Code, Article 873 — Setback distances between buildings and reference to local regulations
- Italian Civil Code, Article 878 — Boundary walls and right to build flush against an existing structure
- Italian Civil Code, Article 1061 — Apparent and non-apparent easements
- Italian Civil Code, Article 1140 — Definition of possession
- Italian Civil Code, Article 1158 — Adverse possession of immovable property and real rights over immovables

- Italian Civil Code, Article 1163 — Vitiated possession and requirement of peacefulness
- Italian Civil Code, Article 1310 — Limitation periods and interruptive acts in joint and several obligations
- Presidential Decree no. 380 of 6 June 2001 — Consolidated Building Act (legislative and regulatory provisions on construction and urban planning)

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Judgment no. 24767 of 25 August 2026** — Acquisition by adverse possession of an easement to maintain a building at less than the statutory setback distance is admissible even where the structure lacks a building permit, as the planning violation operates solely on the public-law plane; a writ of summons served on only some co-possessors does not interrupt adverse possession vis-à-vis omitted co-owners owing to the inapplicability of Article 1310 of the Italian Civil Code to rights *in rem*. Outcome: main appeal and cross-appeal dismissed. Para.: reasons for the decision.

2. **Italian Supreme Court of Cassation, Civil Division, Judgment no. 20490 of 17 June 2026** — Classifying a structure as an appurtenance does not exempt it from compliance with statutory setback distances between buildings under Article 873 of the Italian Civil Code; compensatory damages for breach of setback distances are not *in re ipsa* and require specific proof. Outcome: upheld in part, quashed and remanded on the third ground, first and fourth grounds declared inadmissible, second and fifth grounds dismissed. Para.: third ground.

3. **Italian Supreme Court of Cassation, Civil Division, Order no. 602 of 11 January 2026** — The requirement of apparency necessary for acquiring praedial easements by adverse possession presupposes permanent and visible works exhibiting an unmistakable functional connection with the dominant tenement, which is ruled out in cases of indiscriminate passage. Outcome: proceedings declared discontinued in part as to withdrawing appellants and appeal dismissed as to the remaining appellants. Para.: reasons for the decision.

BT

Bruno Taverniti

AUTHOR • METODO GIURIDICO

Attorney at the Rome Bar — Editor-in-Chief of Metodo Giuridico

Practises civil law and administrative law. His contributions adopt a direct technical approach strictly grounded in case-law analysis.