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Expiry of the 45-Day Suspension Does Not Extinguish Building Enforcement Power

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ABSTRACT
Exceeding the forty-five-day period laid down by Article 27(3) of Presidential Decree No. 380/2001 terminates only the interim effect of the stop-work order without causing any forfeiture of municipal building enforcement authority. This case note analyses Council of State judgment No. 8004/2026 within the statutory framework governing urban-building supervision, including completed unauthorised works located in landscape-protected and road-buffer zones. Through a close textual reading of Articles 27 and 3(1)(e.5) of the Consolidated Building Act alongside Articles 7 and 21-octies of Law No. 241/1990 and recent administrative case law, the article assesses the non-temporary classification of retaining walls, metal storage sheds, and permanent animal shelters, the participatory equivalence of a personally served suspension order, and the evidentiary burden resting on subsequent landowners.

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CASE NOTE • ADMINISTRATIVE LAW & CONSTRUCTION & URBAN PLANNING

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Expiry of the 45-Day Suspension Does Not Extinguish Building Enforcement Power

Stop-Work Orders, Completed Unauthorised Works, and Non-Extinguishment of Municipal Enforcement Authority in Council of State (Consiglio di Stato) Judgment no. 8004/2026

CASE DOSSIER

COURT
Council of State (Consiglio di Stato)

DECISION
Judgment no. 8004 of 3 November 2026

KEY PROVISIONS
Article 27 of Presidential Decree no. 380 of 6 June 2001 • Article 3(1)(e.5) of Presidential Decree no. 380 of 6 June 2001 • Article 7 of Law no. 241 of 7 August 1990

HOLDING
dismissed the appeal, upheld the first-instance judgment, and ordered the appellant to pay EUR 3,000.00 in appellate costs plus statutory charges

JEL: K23, R52 • EuroVoc: 517, 3134, 4619 • Reading 10 min

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LEGAL PRINCIPLE / EDITORIAL HEADNOTE

The lapse of forty-five days under Article 27(3) of Presidential Decree no. 380 of 2001 brings to an end only the interim work-suspension measure, leaving municipal building enforcement power wholly intact even with respect to completed and non-temporary structures.

KEY TAKEAWAYS

01 Autonomy between interim relief and sanction
Expiry of the forty-five-day period under Article 27(3) of the Consolidated Building Act extinguishes only the prohibitory effect of the work suspension, leaving the municipal demolition duty intact.

02 Enforcement against completed works
Urban-building supervision under Article 27(2) extends to structures completed long before inspection, insofar as a building violation constitutes a continuing unlawful act.

03 Exclusion of temporary status for permanent storage
Metal sheds used for business equipment, animal shelters, and retaining walls do not serve merely contingent needs under Article 3(1)(e.5) of the Consolidated Building Act.

04 Participatory equivalence and mandatory action
A personally served interim order describing the unauthorised works and setting a deadline for submissions remedies the non-delivery of initial notice under Article 21-octies(2) of Law no. 241/1990.

ABSTRACT

Exceeding the forty-five-day period laid down by Article 27(3) of Presidential Decree no. 380/2001 terminates only the interim effect of the stop-work order without causing any **statutory forfeiture of municipal building enforcement power**. This case note examines Council of State (*Consiglio di Stato*) Judgment no. 8004/2026 within the statutory framework governing urban and building supervision, including **completed unauthorised works** located in landscape-protected and road-buffer zones. Through a close textual reading of Articles 27 and 3(1)(e.5) of the Consolidated Building Act alongside Articles 7 and 21-octies of Law no. 241/1990 and recent administrative case law, the article assesses the **non-temporary classification** of retaining walls, metal storage sheds, and permanent animal shelters, the participatory equivalence of a personally served suspension order, and the **evidentiary burden** resting on subsequent landowners.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: As the supreme administrative court of Italy, the Council of State (*Consiglio di Stato*) reviews municipal enforcement under Presidential Decree no. 380/2001 and landscape protection rules under Legislative Decree no. 42/2004, applying procedural fairness guarantees anchored in Law no. 241/1990 and compatible with European administrative legality principles. **Comparative Common Law Lens:** Unlike UK or US planning enforcement regimes that often subject breach-of-control notices to fixed statutory limitation periods, Italian Civil Law treats unauthorised construction as a continuing territorial offence (*illecito permanente*) attached to the land itself, so that the landowner's position rests on strict mandatory legality rather than discretionary estoppel or statutory forfeiture (*decadenza*).

01. INTRODUCTION: COUNCIL OF STATE (CONSIGLIO DI STATO) JUDGMENT NO. 8004/2026

Within the system of urban and building supervision established by Article 27 of Presidential Decree no. 380 of 6 June 2001, the relationship between interim measures and final sanctions returned before the Council of State (*Consiglio di Stato*) in Judgment no. 8004 of 3 November 2026[1]. Whenever a demolition order follows a stop-work order after more than forty-five days have elapsed, defence counsel frequently invoke a **statutory forfeiture of building enforcement power**. The issue directly engages the balance between protecting private parties against prolonged site paralysis and restoring territorial legality.

§ 2 The interpretive problem extends well beyond a mechanical calculation of procedural deadlines. Around the expiry of the interim period converge the legal regime governing a **continuing building offence** in respect of completed structures, the boundary of **temporary construction status** in agricultural zones, and the resilience of mandatory administrative acts against procedural defects. Taken as a whole, the enforcement procedure reflects the real, property-attached nature of urban restoration, shielding it from preclusions unknown to the statute.

§ 3 This analysis proceeds from the statutory wording to distinguish the loss of effect of an interim measure from the persistence of the demolition duty. It then examines the case law on **expired work suspensions**, the criteria for classifying ancillary structures, and the resulting evidentiary implications for property owners.

02. PROCEDURAL BACKGROUND AND THE ARCHITECTURE OF ARTICLE 27 OF PRESIDENTIAL DECREE NO. 380/2001

2.1 — From the Site Inspection to the Dual Municipal Orders

§ 4 The dispute decided by the Council of State (*Consiglio di Stato*)[1] originated from an inspection conducted by the Municipality of Castelguglielmo on agricultural land situated within a road-buffer strip and a **landscape-protected area** under Article 142 of Legislative Decree no. 42 of 22 January 2004. Following a notice of commencement of proceedings dated 7 February 2018 that was returned undelivered after postal storage, a site inspection on 2 March 2018 identified five unauthorised structures. Municipal officers recorded a fence mounted on pillars, a **retaining wall**, a concrete building, two **metal sheds**, and a wooden animal shelter. Albeit expressly noting that no works were ongoing, on 23 March 2018 the authority issued suspension order no. 4, served personally on 29 March with a thirty-day deadline for written submissions. Once that period expired without observations, on 23 May 2018 the municipality adopted **demolition order** no. 8 pursuant to Article 27(2) of the Consolidated Building Act.

§ 5 In its first-instance decision, the Regional Administrative Court (*TAR*) for Veneto dismissed the action and ordered the landowner to pay one thousand euros in legal costs. On appeal, the appellant raised five grounds challenging that dismissal. The first two grounds alleged failure to examine a **private technical report** dated 18 March 2024 and breach of Articles 7 and 8 of Law no. 241/1990 due to non-receipt of the initial notice. The third and fourth grounds contested the application of Article 27 to completed works, asserted pre-1996 construction, invoked a 1986 **amnesty application**, and alleged inade-

quate reasoning on the public interest. Lastly, the fifth ground argued that **enforcement power had lapsed** because sixty-one days had elapsed since the interim suspension order.

2.2 — The Textual Distinction Between Paragraphs 2 and 3 of Article 27

§ 6 A literal reading of Article 27 of Presidential Decree no. 380/2001 clarifies the differing scope of the powers entrusted to the municipal executive. Paragraph 1 vests in the office "supervision over urban and building activity within the municipal territory to ensure compliance with statutory and regulatory provisions, planning instruments, and the executive conditions laid down in building permits." Within that supervisory mandate, paragraph 2 requires the competent officer, "upon ascertaining the commencement or execution of works carried out without a permit on areas subject, under national or regional statutes or current or adopted planning rules, to a building prohibition," as well as in any case of planning non-conformity, to issue the sanction. The statute mandates that the authority "shall provide for demolition and restoration of the site" through a **mandatory restorative intervention** devoid of discretionary leeway.

§ 7 A distinct structure and purpose characterise paragraph 3, which governs the **immediate halting** of active construction sites. In that context, the office "orders the immediate suspension of works, which remains effective until the adoption of the final measures referred to in the following articles, to be adopted and served within forty-five days from the work-suspension order." The next sentence also permits **site seizure** by mayoral order within the subsequent fifteen days. Likewise, paragraph 4 serves an expediting purpose at the fact-finding stage, providing that the officer "verifies within thirty days the regularity of the works and adopts the consequent measures" upon reports from judicial police. Every time limit in the **supervisory procedure** safeguards only **procedural and interim expedition**.

§ 8 On this textual foundation fails the third ground of appeal, which centred on the completed state of the structures. The appellant contended that Article 27 in its entirety presupposes works still in progress. The Court refutes that premise by separating the condition for the interim order, tied to an open site, from the reach of paragraph 2. Insofar as an **unauthorised building work** constitutes a **continuing unlawful act** persisting until restoration or regularisation, the passage of time since completion does not bar the final sanction. Completion renders the interim suspension superfluous, yet leaves the obligation to demolish on protected land wholly intact.

03. EXCLUSION OF STATUTORY FORFEITURE OF BUILDING ENFORCEMENT POWER AND ADEQUACY OF REASONING

3.1 — The Forty-Five-Day Time Limit and Comparison with Precedent

§ 9 Within the enforcement architecture of the Consolidated Building Act, the fifth ground of appeal directly addressed the preclusive effect of the forty-five-day period set by Article 27(3). Between the suspension order of 23 March 2018 and the demolition order of 23 May 2018, sixty-one days had elapsed. The Council of State (*Consiglio di Stato*)[1] rules out any statutory forfeiture of building enforcement power and confines the deadline to the duration of the **interim measure**. Expiry terminates the provisional halt to works for the protection of the private party, yet does not extinguish the municipal **enforcement duty**. Linking the loss of sanctioning authority to the contingent circumstance that a suspension order was issued would indeed produce an irrational outcome.

§ 10 The approach thus reaffirmed finds consistent support in recent administrative case law. Judgment no. 10983 of 18 December 2023[2] establishes the **complete autonomy**, both substantive and procedural, between the suspension and the restoration order, clarifying that the lapse of the prohibitory effect casts no repercussions on the sanctioning procedure. Similarly, Judgment no. 2405 of 11 February 2026[3] classifies the deadline as **directory in nature**, affecting solely the effectiveness of the interim act and not the validity of the demolition injunction. The same judgment further confirms the **evidentiary self-sufficiency** of the findings established by the municipality vis-à-vis other authorities and confines any criminal seizure to the enforcement stage.

§ 11 A systematic comparison with cases of genuine administrative forfeiture confirms the coherence of this construction. As clarified by Judgment no. 2176 of 24 February 2026[4], resorting to a certified notice of commencement (*CILA*) or certified notification of activity (*SCIA*) for works requiring a building permit leaves the intervention devoid of authorising effect. The ensuing exercise of **repressive supervision** under Articles 27 and 31 of the Consolidated Building Act is therefore subject neither to the thirty-day prohibitory window under Article 19(6-bis) nor to the twelve-month limit laid down by Article 21-nonies of Law no. 241/1990. In the domain of **discretionary self-review** (*autotutela*), as analysed by Paola De Virgiliis in her study on ex officio annulment and private protection[D1], the statutory time-bar protects **legitimate reliance** placed on a valid permissive title. Where works are carried out without any permit, by contrast, no favourable administrative act exists to be withdrawn.

JUDGMENT / AUTHORITY	POSITION	SUMMARY PRINCIPLE
Council of State (Consiglio di Stato), no. 8004/2026	Aligned	Excludes enforcement forfeiture after 45 days under Article 27(3) of the Consolidated Building Act and confirms the non-temporary nature of walls, sheds, and permanent shelters.
Council of State (Consiglio di Stato), no. 10983/2023	Aligned	Establishes procedural and substantive autonomy between interim work suspension and the distinct municipal sanctioning power.
Council of State (Consiglio di Stato), no. 2405/2026	Aligned	Classifies the 45-day period as directory and confines any preventive criminal seizure to the execution stage of demolition.
Council of State (Consiglio di Stato), no. 2176/2026	Aligned	Denies temporary status to a tool shed on a concrete base and removes works built under an unsuitable CILA from SCIA and self-review time limits.
Council of State (Consiglio di Stato), no. 3052/2024	Aligned	Classifies the demolition order as a mandatory, non-discretionary act and requires a unitary assessment of works built without a permit.

3.2 — Completed Works, Non-Temporary Structures, and Unitary Assessment of the Violation

§ 12 In rejecting the first ground concerning the omission to mention the defence expert report, the judgment reiterates that **private technical reports** provide mere evaluative arguments and do not con-

stitute **formal evidence**. A de novo review of the merits further confirms that the retaining wall possesses its own **functional autonomy** and requires a building permit. As previously highlighted by Paola De Virgiliis in her analysis of permitted development for ancillary works[D2], a permanent alteration of the land precludes permit-free ancillary classification.

§ 13 The decisive statutory standard is found in Article 3(1)(e.5) of Presidential Decree no. 380/2001. That provision classifies as **new construction** also "the installation of light structures, including prefabricated ones, and structures of any kind" when "they are used as dwellings, workplaces, or as storage facilities, warehouses, and the like, with the exception of those intended to satisfy merely temporary needs." The statutory text thus gives priority to the **functional criterion** of intended use over construction technique. Light removability of sheet metal or timber does not dispense with a building permit.

§ 14 The pleaded inactivity of the construction business owing to a market downturn lasting many years disproves any contingent nature of the metal sheds. Equally, the presence of the animal shelter since 1996 demonstrates **permanence exceeding twenty years**, wholly incompatible with provisional status. Along the same lines, Judgment no. 2176 of 24 February 2026 denies temporary status to a twenty-five-square-metre tool shed resting on a concrete slab notwithstanding the filing of a *CILA*. With equal rigour, Judgment no. 3052 of 3 April 2024[5] affirms the **principle of unitary assessment of the violation** against any artificial fragmentation of metal or timber structures.

§ 15 No less stringent is the dismissal of the fourth ground regarding proof of planning lawfulness. Once a search of the municipal archives through historical land-registry records proves fruitless, the **burden of proof** as to the existence of a building permit falls on the landowner. Neither a 1998 retrospective regularisation grant relating to a different cadastral sheet, nor a 1986 amnesty application of unknown outcome concerning an eighteen-square-metre building unrelated to the contested works, assists the appellant. Neither cadastral extracts nor Law no. 257 of 27 March 1992 establish construction prior to 1 September 1967, whereas the **real, property-attached character** of the sanction binds the current owner.

> ***The expiry of the interim deadline extinguishes only the provisional prohibition on site works, whereas the continuing building offence preserves intact the municipal duty of restoration regardless of the passage of time.***

3.3 — How Procedural Participation and Article 21-octies Operate in Mandatory Acts

§ 16 Failure to deliver the **notice of commencement of proceedings** does not invalidate a demolition order where a subsequent interim measure served personally describes the unauthorised works and sets a deadline for defence submissions. A mandatory sanction withstands judicial review in any event absent decisive factual elements. Article 7 of Law no. 241 of 7 August 1990 lays down a clear rule: "Where there are no impediments arising from particular requirements of procedural expedition, the commencement of the proceedings shall be communicated, in the manner provided by Article 8, to the persons against whom the final measure is intended to produce direct effects." **Anticipated interim measures** are expressly preserved. In the instant case, personal service of the suspension order, identifying the officer in charge and granting thirty days for submissions, fulfilled the **participatory function** notwithstanding the earlier undelivered notice.

§ 17 Autonomy between the interim measure and the sanction therefore does not prevent the former act from producing an **equivalent informative effect**. On the plane of invalidity operates, moreover, the bar under Article 21-octies(2), first sentence, of Law no. 241/1990: "A measure adopted in breach of rules governing procedure or the form of acts shall not be annulled where, owing to the mandatory nature of the measure, it is manifest that its operative content could not have been different from that actually adopted." The mandatory and **non-discretionary nature of the injunction**, reaffirmed in Judgment no. 3052/2024 to the point of dispensing with commencement notice, renders **service defects** immaterial whenever the private party fails to adduce relevant facts. No change in the operative order could have resulted from an amnesty application unrelated to the contested structures.

AUTONOMY OF INTERIM RELIEF AND PRESERVATION OF MANDATORY ACTS

Personal service of an interim measure that describes the unauthorised works and grants a deadline for submissions remedies non-delivery of the initial notice; for unpermitted and non-temporary structures, Article 21-octies(2) in any event bars annulment of the mandatory demolition order.

04. CRITICAL ISSUES, DISTINGUISHING, AND DEFENCE IMPLICATIONS FOR THE LANDOWNER

§ 18 Within the framework of the powers conferred upon local authorities by Article 27 of Presidential Decree no. 380/2001, Judgment no. 8004/2026[1] brings to light a procedural point warranting critical scrutiny. The suspension order had been adopted despite expressly recording that no works were underway, in evident tension with the prohibitory purpose of paragraph 3. The Council of State (*Consiglio di Stato*) refrains from reviewing the interim act because it was neither challenged nor merged into the final order. Such practices nonetheless risk turning a specific urgent measure into an improper substitute for the notice of commencement. Similar caution is warranted by the tentative reference to apparently missing permits, whose adequacy of reasoning survives solely because the defence remained inactive during the allotted period.

§ 19 A second observation concerns the lengthy period elapsed since acquisition of the land in 1996 and the exclusion of any **heightened duty to give reasons** on the current public interest. The judgment applies the strict standard governing mandatory acts, reinforced by the presence of landscape and road-buffer restrictions. That core rationale must, however, be separated from the first-instance remark regarding the hazardous nature of fibre-cement sheets. By treating the asbestos issue and the Veneto Regional Environmental Protection Agency (*ARPA Veneto*) note of 14 February 2018 as mere *obiter* remarks (*ad abundantiam*), the appellate court preserves the urban-planning coherence of the operative ruling and avoids interference from extraneous public-health considerations.

§ 20 On the plane of statutory boundaries, rejecting any statutory forfeiture of building enforcement power calls for careful **distinguishing** from situations governed by peremptory deadlines. Where works fall within the scope of a *SCIA* or *CILA*, as clarified by Council of State (*Consiglio di Stato*) Judgment no. 2176/2026[4], both the thirty-day prohibitory period and the twelve-month window for ex officio annulment remain operative. Thus remains intact the protection of **legitimate reliance** already examined in this journal by Paola De Virgiliis[D1] with respect to validly formed permissive titles. Nor does the

sanction extend to genuinely contingent structures lacking permanent anchorage, provided they are unrelated to a single composite development as explained in Judgment no. 3052/2024[5].

§ 21 The defence implications for a landowner served with an order under Article 27 of the Consolidated Building Act require a rigorous selection of arguments and of the **evidentiary burden**. Purely procedural objections resting on the expiry of forty-five days or on Article 7 notice encounter the bar of Article 21-octies(2), unless facts capable of altering the outcome are proved. Counsel must instead adduce **objective documentary evidence**, such as building permits or amnesty applications matching the sanctioned land parcels and reliable proof of construction predating 1 September 1967. Historical registry extracts, assumptions drawn from materials, and private expert reports fall short of that standard.

§ 22 A further enforcement precaution is required where the property is subject to **preventive criminal seizure**. According to Council of State (*Consiglio di Stato*) Judgment no. 2405/2026[3], the criminal restraint neither invalidates the demolition order nor excuses compliance within the ninety-day period granted. It therefore falls to the addressee to submit a reasoned request to the criminal court for **targeted release from seizure** for the purpose of demolition under Article 85 of the Implementing Provisions of the Code of Criminal Procedure, thereby preventing automatic forfeiture of the area to the municipal estate.

05. CONCLUSIONS

§ 23 The reasoning of Council of State (*Consiglio di Stato*) Judgment no. 8004/2026[1] consolidates the functional separation between interim protection and building enforcement. A coordinated reading of paragraphs 2 and 3 of Article 27 of Presidential Decree no. 380/2001 confirms that expiry of the forty-five-day period extinguishes only the provisional suspension, ruling out any statutory forfeiture of municipal building enforcement power. The continuing nature of the offence and the real character of the sanction safeguard the **mandatory duty of restoration** with respect to completed structures in protected areas. Any objection based merely on the passage of time accordingly fails.

§ 24 In practical litigation terms, the judgment charts a clear course for urban-planning disputes. Grounds resting on procedural defects neutralised by Article 21-octies(2) of Law no. 241/1990 or on claims of temporary status refuted by multi-year use cannot withstand judicial scrutiny. Effective defence requires instead the production of **pertinent building permits**, conclusive proof of construction prior to statutory licensing requirements, and timely coordination of enforcement before the criminal court.

AUTHORITIES & REFERENCES

Table of Authorities & References Cited

I. STATUTORY PROVISIONS

Article 27 of Presidential Decree no. 380 of 6 June 2001 – supervision of urban and building activity, demolition orders, and interim suspension of works.

Article 3(1)(e.5) of Presidential Decree no. 380 of 6 June 2001 – definition of new construction works and legal regime for light structures and storage facilities.

Article 7 of Law no. 241 of 7 August 1990 – notice of commencement of administrative proceedings and adoption of interim measures.

Article 21-octies(2) of Law no. 241 of 7 August 1990 – non-annullability of mandatory administrative acts for procedural or formal defects.

II. CASE LAW CITED

[1] **Council of State (Consiglio di Stato), Judgment no. 8004 of 3 November 2026** OUTCOME: dismissed the appeal, upheld the first-instance judgment, and ordered the appellant to pay EUR 3,000.00 in appellate costs plus statutory charges. PARA.: §§ 9–14 on the absence of statutory forfeiture beyond 45 days under Article 27(3) of the Consolidated Building Act, applicability to completed works, non-temporary status of structures, and participatory equivalence under Article 21-octies of Law no. 241/1990.

[2] **Council of State (Consiglio di Stato), Judgment no. 10983 of 18 December 2023** OUTCOME: dismissed the appeal and ordered the appellant to pay EUR 3,000.00 in appellate costs plus fees and statutory charges. PARA.: § 9 on the complete procedural and substantive autonomy between the 45-day interim work suspension and the distinct municipal sanctioning power.

[3] **Council of State (Consiglio di Stato), Judgment decided on 11 February 2026, no. 2405** OUTCOME: dismissed the appeal and ordered the appellant to pay EUR 4,000.00 in appellate costs plus statutory charges. PARA.: §§ 3–5 on the directory nature of the 45-day time limit, the self-sufficiency of demolition findings, and the burden to request release from seizure under Article 85 of the Implementing Provisions of the Code of Criminal Procedure.

[4] **Council of State (Consiglio di Stato), Judgment decided on 24 February 2026, no. 2176** OUTCOME: dismissed the appeal and ordered the appellant to pay EUR 4,000.00 in appellate costs plus general expenses and statutory charges. PARA.: §§ 11–12 on the non-temporary nature of a tool shed on a concrete slab and the inapplicability of SCIA and Article 21-nonies time limits to works requiring a building permit.

[5] **Council of State (Consiglio di Stato), Judgment no. 3052 of 3 April 2024** OUTCOME: dismissed the appeal (with a twofold contradictory costs ruling in the operative part between a EUR 5,000.00 costs award plus statutory charges and a subsequent set-off formula). PARA.: §§ 8.1–8.2 on the mandatory nature of demolition, the superfluity of commencement notice under Article 7, and the principle of unitary assessment of the violation.

III. LEGAL SCHOLARSHIP CITED

[D1] De Virgiliis P., Metodo Giuridico, Annullamento d'ufficio: decadenza del potere e tutela del privato [Ex Officio Annulment: Statutory Forfeiture of Power and Private Protection]. Analysis of the statutory forfeiture period for discretionary self-review under Article 21-nonies of Law no. 241/1990 and legitimate reliance as a distinguishing benchmark vis-à-vis mandatory enforcement power.

[D2] De Virgiliis P., Metodo Giuridico, Edilizia libera per opere pertinenziali: limiti alle NTA [Permitted Development for Ancillary Works: Limits on Municipal Implementing Rules]. Reconstruction of the limits on ancillary building status and the building-permit requirement for structures possessing functional autonomy.

GM

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