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# Up-grading Illegal Building Settlements: An Urban-Planning Methodology

Claudia de Biase<sup>a</sup>, Salvatore Losco<sup>b\*</sup>

<sup>a</sup> Assistant Professor of Urban and Regional Planning, Department of Architecture and Industrial Design Luigi Vanvitelli,  
Second University of Naples, via S. Lorenzo 31, 81031 Aversa, Italy

<sup>b</sup> Assistant Professor of Urban and Regional Planning, Department of Civil Engineering, Design, Building and Environment, Second University  
of Naples, Polytechnic and Basic Sciences School, via Roma 29, 81031 Aversa, Italy

## Abstract

Starting from the definitions of illegal building and synthesizing the historical roots of the phenomenon in Italy, this contribution identifies three types of illegal building and traces the development of the regulations that have characterized this problem. The proposal of a reading methodology is described through its application to the case-study of the municipality of Dragoni (Ce) in Campania Region. After proposing a distinction between illegal building and unauthorized urban-planning and recognizing three approaches to solving the problem: repression, amnesty and mitigation, the paper reflects on the latter since it addresses redevelopment with an urban vision and not exclusively a building one. After a brief analysis of national and regional legislation, where it is possible to resort to the Recovery of Illegal Building Plans, even through variants to the municipal general planning instruments, follows the highlighting of the main objectives and guidelines in reference to the preparation of specific implementation planning instruments.

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## 1. Illegal building: definitions

Urban planning has four main functions: first, ensuring that people have healthy housing, i.e. environments in which space, fresh air and the sun are guaranteed, which are the essential conditions of life; second, to organize

\* Corresponding author. Tel.: +39 347-2427963;  
E-mail address: [salvatore.losco@unina2.it](mailto:salvatore.losco@unina2.it)

workplaces so that, instead of being a painful slavery, they resume the natural character of human activity; third, to provide the necessary installations for the good use of free time; fourth, establish the connection between the different organizations with a trafficking network that ensures exchanges while respecting the prerogatives of everyone (Le Corbusier, The Athens Paper, Milan 1960). The word abusive derives from the Latin *abusus* - from *aburti* - which means using badly. There are various definitions in the legal and planning manuals, but the most shared seems to be inspired by Italian Law: illegal building should be understood as the violation, in the construction sector, of standards-assisted by administrative and penal sanctions. Illegal building is the act through which buildings, or parts of them, are built or extended in the absence or partial derogation from the necessary regulatory approvals. The building TU (Presidential Decree no. 380/01), in particular art. 31, referring to Law 47/85 (first Law on the building amnesty) identifies three different types of illegal buildings known as serious<sup>1</sup>:

- the realization of a building without permission to build;
- the realization of a completely different building from that provided in the proposed project;
- the realization of a work with essential variations.

One of the most important new aspects of the TU is the introduction of so-called (Art. 30) illegal housing development; Illegal housing development is when works involving urban transformation or construction of land themselves are started contrary to the requirements of planning instruments, in force or adopted, or otherwise established by the state or state Laws or without the appropriate authorization; as well as when such processing is prepared through fractionation and sale, or equivalent acts, the land in plots that, for their characteristics such as the size in relation to the nature of the soil and to its destination according to the urban planning tools, the number, the location or possible provision of infrastructure works and with respect to elements related to the purchasers, denounce unequivocally the destination to the structure built purpose. From the reading of these first definitions, it is clear that there are different types of illegal building. The most adopted subdivision is the one that takes into account the intended use of the property. According to this line of thinking, there is a distinction between the *necessary illegal building* and *speculative illegal building*: two examples which represent the past and present outlawed building in Italy. The first – the so-called *necessary illegal building* – refers to the need to provide a house as a place indispensable for domestic life highlighting serious individual economic difficulties, as well as inefficient housing policy by the State<sup>1</sup>. The second – the so-called *speculative illegal building* – represents a different vision of the right to housing. Focusing on the principle that the home is a primary and inalienable right, more conscious entrepreneurs have invested in brick to make new and easy money. Settis highlights: both at a business and family level, the belief was soon spread that investing in bricks and mortar is like having a piggy bank to draw from, even counting what is unsold, as well as the empty houses<sup>2</sup>. The current illegal building situation, which has been created over time with the amnesty, wanting to curb it. It is believed that had bold measures not been taken, the situation would have worsened further, since all previous attempts had failed to curb the relentless drive of illegal building. The intent of the legislature – in this context – is clear: there is a need to create a different government policy to regularize and close, through a single regulation, a forty year period of illegal building. De Chiara claims that the first Law on the building amnesty would have been justified by the fact that it had come to create a favourable situation to start a new planning process that, by linking the new period in the past, it excluded the possibility of the recurrence of negative phenomena<sup>3</sup>.

When did illegal building start in Italy? According to Berdini<sup>4</sup>, it was Fascist Rome that invented illegal building. In fact, at that time, Italy lacked any comprehensive regulations that only appeared in 1942. Initially, it was necessary illegal building: it was a necessity that whoever built outside of any rules was to give shelter to his family. In this approach, what was the attitude of the State? Paradoxically, it did not limit this type of building, even when it was illegal, since necessary illegal building was not considered a transgression, but rather as an element to strengthen the economy of the country that must recover from the effects of war. Therefore, illegal building was used, as a variation to the construction sector, as an actual economic driver. Where is it carried out? Geographically, necessary illegal

<sup>1</sup> Alberto Clementi, Francesco Perego ()( a cura di), La metropoli spontanea. Il caso di Roma, Dedalo, pag. 339.

<sup>2</sup> Settis S. (2010) "Paesaggio Costituzione cemento. La battaglia per l'ambiente contro il degrado civile", pag.73, Torino, Ed.Einaudi.

<sup>3</sup> De Chiara A. (1989) *L'abusivismo italiano nelle aree urbane*, pag. 60, Ed. CEDAM, Milano.

<sup>4</sup> Berdini P., (2010) *Breve storia dell'abuso edilizio in Italia dal ventennio fascista al prossimo futuro*, pag.25, Roma, Ed. Donzelli.

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