

Property security. Regulation and compliance in the light of the urban planning and land planning code

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Page | 77

ABSTRACT

In this article, I wanted to carry out an analysis of the issues regarding the security of private property and public property, through the prism of the regulations of the Urban Planning and Territorial Development Code (current approved Project), bringing to the fore the fact that its provisions affect the right to public property and the right to private property, through the legalization of buildings that were built without a building permit or in violation of it, but also through the fact that construction will be allowed on green spaces, thus violating a fundamental right, the right to life, by affecting long-term environment.

Reviewing the opinions of some specialists in the field and from the specialized literature regarding the text of the law, on the effects it will inevitably produce, predictable or not, I tried to highlight the problems that local public authorities will face, precisely because this normative, has in its content lacunar regulations, contains a legislative vacuum, which will put the authorities in borderline situations, in the impossibility of issuing building permits under legal conditions. A Code of Urban Planning and Territorial Development should come together with the Norms of its application, in order to apply the legislative provisions in a unitary and non-interpretable way, thus respecting the principles of the rule of law.

KEYWORDS: *building permit, property security, town planning, land development.*

Introduction

The area of building authorization has been one of the most active areas from a legislative point of view in the last 20 years. Since the second republication in 2004, Law no. 50/1991¹ regarding the authorization of the execution of construction works underwent no less than 51 changes.

Therefore, a unitary regulation that responds to practical problems is a challenge. The Government of Romania issued Government Decision no. 298/2021², by which he approved the initial drafts of the Land Development, Urban Planning and Construction Code, also known as the "Code". In order to solve discrepancies and inconsistencies in the application of the law and to

¹ Law no. 50/1991 regarding the authorization of the execution of construction works, text republished in the Official Gazette, Part I no. 933 of October 13, 2004, in force since August 7, 1991.

² Decision no. 298/2021 for the approval of the preliminary theses of the Code of territorial development, urbanism and constructions, Text published in the Official Gazette, Part I no. 320 of March 30, 2021. In force from March 30, 2021.



provide more clarity to the relevant regulations, the Urbanism Code unites the numerous regulations in the field into a single primary and secondary, general and special regulatory act, as well as technical norms.

Three main laws, the Law on territorial planning and urban planning no. 350/2001³, Law no. 50/1991⁴ regarding the authorization of construction works and Law no. 10/1995⁵ on quality in construction, together with a series of secondary normative acts, are integrated into the Urban Planning Code.

Public authorities need more legislative precision to clarify the intention of the legislator in certain cases, to avoid a legislative vacuum in other cases and to integrate the measures of Law no. 50/1991⁶ regarding renewable energy projects in the new Urban Planning Code.

In accordance with other jurisdictions, such as the French Town Planning Code, the Town and Country Planning Code will regulate country planning and town planning documentation. The regulations will include both rules applicable at the national level and regulations applicable for certain protected areas, such as the Danube Delta Biosphere Reserve, the Black Sea littoral area and the Carpathian Mountains areas, rules regarding the adoption and approval of urban planning and territory documentation, rules regarding the way of approving construction works (issuance of the building permit), but also the resolution of administrative disputes and problems related to the field of urban planning.

In addition, the Urban and Spatial Planning Code aims to regulate and clarify some practical aspects for which the current set of fragmented rules do not provide clear solutions, leaving enough room for different interpretations, which undermines predictability and accuracy in the application of the legal framework throughout the country .

The brief analysis below analyzes the Urban Planning and Land Development Code, through the lens of the principles established by H.G.298/2021⁷ from the perspective of the regulations and the predictable effects they will produce. Following a brief analysis of the Urbanism and Territorial Planning Code, it can be seen that it has many shortcomings and many ambiguities.

Through the provisions of the Urban Planning and Territorial Planning Code, it was clarified that the principle underlying the limitation of property rights in urban planning aims to achieve a reasonable balance between the private interests of the owners of property rights and the public interest. The question is whether it is possible to achieve balance in society, in the conditions in which the principle of continuity and the principle of legality are violated, whether it is possible to

³ Law no. 350/2001 regarding territorial development and urbanism, Text published in the Official Gazette, Part I no. 373 of July 10, 2001, in force since July 10, 2001, accessed at <https://lege5.ro/Gratuit/gmztknju/legea-nr-350-2001-privind-amenajarea-teritoriului-si-urbanismul?pid=12845475#p-12845475>, on 28.10.2023.

⁴ Law no. 50/1991 regarding the authorization of the execution of construction works, text republished in the Official Gazette, Part I no. 933 of October 13, 2004, in force since August 7, 1991.

⁵ Law no. 10 of January 18, 1995 (*republished*) regarding quality in construction, text published in the Official Gazette no. 765 of September 30, 2016.

⁶ Law no. 50/1991 regarding the authorization of the execution of construction works, text republished in the Official Gazette, Part I no. 933 of October 13, 2004, in force since August 7, 1991.

⁷ H. G. no. 298/2021 for the approval of the preliminary theses of the Land Development, Urban Planning and Construction Code, text published in M. Of. no. 320 of March 30, 2021.



streamline the activity of the public administration, to simplify procedures, without taking into account the observance of legal provisions.

1. The disadvantages of the provisions and regulations of the Urban Planning and Spatial Planning Code

Page | 79

1.1. Non-compliance with the principle of continuity, causes non-compliance with the principle of legality

The provisions and regulations of the Urban Planning and Territorial Planning Code do not refer to the principle of continuity in the first place, a principle that must be the basis of its conception exactly as in Fiscal Law. Without respecting the principle of continuity, a legislative vacuum is created.

Therefore, we cannot subsequently have claims in relation to the activity of local public authorities, which are already caught in an equation without solutions and put in a situation to premeditatedly violate the rights of the citizen. Due to the creation of the legislative vacuum, the local public authority, executive or deliberative, can come up with changes on some elements of urban planning and territorial planning. We refer here to the fact that by not respecting the principle of continuity, the principle of legality is not respected. When there is a legislative vacuum, new instruments are created, without applying the legislative provisions uniformly.⁸

The Urban Planning and Spatial Planning Code should also come together with the Code of Procedure, for the application of the provisions, precisely to respect the two principles of continuity and legality. By not respecting the two principles, premeditated and regulated damage is done to the security of property, regardless of its form, private property or public property, with unforeseen repercussions and with long-term chain effects.

In this sense, I bring into discussion the provisions of Law no. 7/2020⁹ for the amendment and completion of Law no. 10/1995 regarding quality in construction and for the amendment and completion of Law no. 50/1991 - regarding the authorization of the execution of construction works, in force from 11 January 2020, in the form applied from 31.05.2021, which did nothing but demonstrate that the local public administration is unable to function, to apply the unitary law, precisely because it did not come with Application Norms.

A big minus of the Urban and Spatial Planning Code is represented by the regulation of solutions for constructions built without a building permit or with its non-compliance. The code proposes to tighten the legal system by increasing the statute of limitations for misdemeanors from three to five years and introducing a significant restriction on the possibility of subsequent prosecution. Consequently, instead of using the current process of obtaining "Building Attestation

⁸ <https://monitoruljustitiei.ro/>

⁹ Law no. 7/2020 for the amendment and completion of Law no. 10/1995 regarding quality in construction and for the amendment and completion of Law no. 50/1991 regarding the authorization of construction works, text published in the Official Gazette, Part I no. 8 of 08 January 2020. Form applicable on 30 January 2020.



Certificates"¹⁰, regularization authorizations will be issued. These permits will only be issued for work that has been carried out without complying with the permit, which means that work that has been carried out without a permit will again be excluded by this regulation. These permits will only be issued for minor construction, such as single-family homes.

As an exceptional solution provided in this regard, for a period of 1 year after the entry into force of the Urban Planning and Territorial Planning Code, regularization authorizations will be issued for other constructions, but with the payment of major fees 10 times compared to the fees for obtaining the building permit. The ambiguity of these regulations can be noted, in the sense that the control body that sanctioned the contravention of the execution of unauthorized works or in violation of the provisions of the authorization to require the owner to obtain the regularization authorization.¹¹

Another minus of the Urban Planning and Territorial Development Code is that it does not include the limitations provided in the chapter for the regularization authorization, and as a scope it also includes works executed without authorization. The problem not taken into account is represented by the constructions that do not fall within the proposed limitations, which means that their situation remains uncertain. Thus, the owner finds himself in the impossible situation of registering the building in the land register and ordering construction, which can be considered a real sanction, but for society it means a loss.

The local authorities want to recover these unauthorized constructions to the extent that they comply with urban and technical regulations, even with the payment of an increased tax, as opposed to demolition which is not profitable at all. As a result, the legislator must review the limitations on obtaining the regularization authorization.

1.2. Violation of the right to property, a fundamental right by regulating a discriminatory measure

The Urban Planning and Territorial Planning Code seriously affects the security of property rights, by proposing a new procedure, which allows the construction of buildings based on a simple notification registered with the local public authority, within 15 working days, after which the authority will indicate if authorization is required. Thus, a free will is created, which remains at the reach of the local elected and not of the specialist in the field of urban planning, giving way to the preferential solution of the requests, precisely because the exact regulation is missing. This is a flagrant violation of human rights. Included in this procedure is a certain category of works, which can currently be carried out without a building permit for single-family homes that have access to their own lot, the ground floor height regime, without a basement, and which have a maximum built-up area of 150 square meters, located in the countryside, respecting the urban planning regulations, but applicable only for standard projects, which are made available in

¹⁰ Construction attestation certificate is an administrative document that certifies that the building construction was carried out according to the building permit and that there is a reception report upon completion of the works, and is requested by the Real Estate Cadastre and Publicity Office.

¹¹ PeliPartners analysis: The Project of the Urbanism Code - major reforms regarding building permits require legislative precision.

advance by the central or county public authorities, and which are purchased following the organization of solution contests, respecting the specifics of the area.

We ask the pertinent question, what is the status of a citizen from the rural environment and what is the status of a citizen from the urban environment, who, how and why can allow the commission of an illegal act, invoking and based on a legal provision, namely the Urban Planning and Development Code. The territory, in the sense that the treatment of the rights of citizens from the two environments (urban and rural) is applied differently. Either the property right is a fundamental human right, it is a constitutional right and cannot be violated by offering discriminatory solutions.

1.3. Violation of the right to life by violating the right to a healthy environment

Another big minus of the Urban and Spatial Planning and Spatial Planning Code is that it violates the right to a healthy environment, because it does not refer to the ban on green spaces between housing blocks built in big cities. Thousands of green spaces will be in great danger, the practice is visible and at the present time, constructions built in violation of the law are ubiquitous.¹²

A measure is provided by which the local public authority will be obliged to buy back for a lot of money land in order to develop open spaces, because the real estate developers will not develop them, having a regulation in place, and which by application violates the right to a healthy environment. In this situation, the local public administration is brought to the call, in the first line to find solutions, based on solving the problems of the Local Council, and approving the spending of public money.

The penalties for those who break the law by building on green spaces reach 25,000 lei. In the Urban Planning and Spatial Planning Code, this sanction is modified with a single fine, quantified between 50,000 and 500,000 lei. In the situation where the fined person pays half of the amount within the stipulated period of 15 days, it still reaches the amount of 25,000 lei. The provisions of Law no. 24/2007¹³ the law of urban green spaces, a measure is provided for changing the destination of green space in the urban environment, "that if someone introduces a plot of land from extra-village to inner-village, or industrial-buildable zone, he must offer each inhabitant 20 square meters of green space".¹⁴

Therefore, it can be concluded that according to the legal provisions in force, for one resident, a developer must guarantee a space of 20 sqm of green space. In this regard, there is a European recommendation, which will be transposed into a European Directive, which will become mandatory for the guaranteed area to be 26 square meters of green space. The question arises, to what extent and how this measure will be transposed into the legislation in the field.

¹² <https://www.g4media.ro/>.

¹³ Law no. 24 of January 15, 2007 (**republished**) regarding the regulation and administration of green spaces in the urban areas*), published in the Official Gazette no. 764 of November 10, 2009.

¹⁴ Ibid.

1.4. Violation of the principle of legality in relation to the issuance of P.U.Z.¹⁵

The new provisions of the Urban Planning and Territorial Development Code mostly affect urban plans at the national level, not only at the local level, because in certain areas they are in the preparation procedure for approval, or exist and are approved, or are approved and in force, producing effects. The most serious problem with the principle of legality is that, if a P.U.Z.¹⁶ is canceled and a building permit is issued based on it and is not contested, the law remains in force.

Challenging a P.U.Z.¹⁷ it can only be done within the first 5 years of issuance. At the level of big cities, this problem is vital and with major repercussions, because the number of these documents is very high. Therefore, there is the impossibility of analyzing them in a timely manner, which implicitly leads to the violation of the principle of continuity on the one hand and to the violation of the principle of legality on the other. Also, the effects produced by contesting them produce unforeseen effects on P.U.G.¹⁸, some in the drafting procedure, others in the process of approval and some in force.

1.5. Violation of the principle of decisional transparency

The Code of Urbanism and Territorial Development leads to the disappearance of a number of 17 normative acts. The intention of this code is to systematize and codify all these regulations, with a view to their uniform application in the first place. The reality is different, because one cannot discuss systematization and codification, the result is defined as incorporation, by taking over the provisions of the old regulations, which will be repealed, later introduced into the content of the new code through simple formulations, which are not related to reality. "The draft of the new Urban Code was in public consultation for only 30 days, with over 500 articles."¹⁹

1.6. The lack of correlation with the current legislation on renewable energy, a blow to the objectives allowed by Law no. 18/1991²⁰

The provisions of the Urban Planning and Spatial Planning Code are not correlated with the legislative changes in the matter of renewable energy projects, which are implemented by the provisions of Law no. 21/2023²¹. According to these provisions, it is allowed to carry out

¹⁵ P.U.Z. - Zonal Urban Plan is a project that has the character of detailed specific regulation of the urban development of an area in the locality (covering all functions: housing, services, production, circulation, green spaces, public institutions, etc.) and ensures the correlation of complex urban development of the area with the provisions of the PUG of the locality of which it is a part.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ P.U.G. - General Urban Plan, Methodological Norm, is a project that is part of the territorial development and locality development program. More precisely, the PUG constitutes the legal framework for carrying out development programs and actions according to Law 350/2001, amended and supplemented by Law 289/2006, information.

¹⁹ <https://www.gandul.ro/exclusiv/>.

²⁰ Law no. 18/1991 land fund law, text published in the Official Gazette no. 37 of February 20, 1991.

²¹ Law no. 21 of January 9, 2023 for the amendment and completion of Law no. 50/1991 regarding the authorization of the execution of construction works, text published in the Official Gazette no. 28 of January 10, 2023.

renewable energy projects in the outskirts of the city, without prior possession of urban planning documentation, on a maximum area of 50 hectares. In the section dedicated to urban planning, the new draft law provides that the objectives allowed by the provisions of Law no. 18/1991²², to be made outside the city, respecting P.A.T.²³ or P.U.G. – ul,²⁴ only if they included urban planning regulations and technical information on how to use the lands outside the village, or based on a P.U.D.²⁵ ., within the authorization procedure.

Conclusions

The Urban Planning and Territorial Development Code in the form approved as a project affects the right to public or private property, it also affects the right to life, to a healthy environment, it seriously affects the right to life if we refer to the constructions with high seismic risk and for which the regulations leave much to be desired. It also represents a legislative instrument through which a lot of chaos will be created in central and local public administration, in the business environment, as well as in the field of real estate developers. On the other hand, the fact that it was not adopted is another minus, because the development of this code was financed by the Administrative Capacity Operational Program (POCA) 2014-2020²⁶. For the local public administration, especially for the field of urban planning and territorial development, it is impetuously necessary to review it with more coherence and also to create some methodological Norms for its application - transposed into a Code of Procedure.

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²² Law no. 18/1991 land fund law, text published in the Official Gazette no. 37 of February 20, 1991.

²³ P.A.T.J. - The county land development plan has a directive character and represents the spatial expression of the county's socio-economic development program. The county land development plan correlates with the national land development plan, the zonal land development plan, sectoral government programs, as well as other development programs, information.

²⁴ P.U.G. - General Urban Plan, Methodological Norm, is a project that is part of the territorial development and locality development program. More precisely, the PUG constitutes the legal framework for carrying out development programs and actions according to Law 350/2001, amended and supplemented by Law 289/2006, information.

²⁵ P.U.D. - Detailed Urban Plan is the one that establishes the rules at the level of a sub-territory, a street, a square or a group of lands, being the document that specifies the parameters in which a construction can be made, information.

²⁶ Administrative Capacity Operational Program (POCA) 2014 – 2020, promotes the creation of a modern public administration, capable of facilitating socio-economic development, through competitive public services, investments and quality regulations.

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