

THE OBJECT OF THE URBAN PLANNING CERTIFICATE

Lecturer Phd. Georgiana SEMENESCU
“Constantin Brâncuși” University of Târgu-Jiu

Abstract

The character of the urban planning certificate is explicitly stated by art. 29, paragraph (1) from Law no. 350/2001 concerning land planning and urban planning which disposes: the urban planning certificate is the binding informing act by which the county or local government discloses the legal, economic and technical regime of the buildings and the necessary conditions for the realization of some investments, real estate transactions or other real estate operations, according to the law. [1]

Keywords: *urban planning, urban planning certificate, administration, legal regime.*

Along with human birth, and throughout his evolution, there were multiplied the influences on the natural environment. Thus, with the development of science and technology, it has taken the opportunity to increasingly change more and more the environment, but it did it at the expense of its elements. Since the relationship between humanity and the systems and natural resources has changed in the negative sense, especially in the second half of the last century, our generation has the mission to take decisions that will determine our future and, in general, if the planet will remain habitable or not. [2] The fact that our life support systems are the target of unprecedented attacks from the combined effects of urbanization, industrialization, agriculture and daily life styles is not disputed by anyone: but what is not known is how many disorders these systems can support without functioning anymore. Under these circumstances, environmental protection has become a necessary component of human society which involves detailed analysis of both the biodiversity and the natural resources, as well as the plan for potential hazard human activities on the environment. [3]

What is urban planning? The term is a neologism created a little more than a century ago [4] but, however, the notion that it defines seems to be *a priori* as old as urban civilization; in fact, this apparent contradiction comes from the very ambiguity that characterizes the word *urbanism*, which summary said, has two meanings. The first, which is the widest and belongs to everyday language , *covers any conscious action intended to devise, to organize, to decorate and to transform the city and urban areas*; considered in this regard the word *urbanism* designates a very old reality, also called urban art which opposes to urban planning in the strict meaning. [5] The second meaning designates a specific reality: the emergence, by the late nineteenth century, of a new discipline that wants to be a science and *a theory of city* “distinguishing from the urban arts by its reflective and critical nature, and by scientific claim”. [6] This is the original meaning

of the word urbanism that has not been created only to name this new reality, but that is often used in a much broader and imprecise sense; by extension, the term has come to encompass much of what is related to the city, whether it is about public works, urban morphology and the city plan, the social practices and city mentalities, legislation and urban law. [7]

For a long time, urban planning and law have developed separately. The first one emerged and evolved from and relying on architecture. The second one intervened significantly in the reference field relatively late. The report between urban art of the great architectural works and town planning has seen many changes, relations have enriched and diversified related to a civilization which tends to rely on oversize and full development of space. [8]

Current urban planning aims to space arrangement, and has as a defining function its adaptation to the socio-cultural and ecological requirements expressed by the city. At this point, he connects with the law, called to formalize and institutionalize such requirements. But to this direct and increasingly complex connection between legal regulation and spatial proximity, the intersection between urbanism and law has already experienced a long and a rich history. [9]

A complex process, with specific objectives and aims, the realization of urban planning rules involves several stages, from their elaboration to their establishment in urban planning documentation (plans and regulations), to determining the technical consequences and to definitive damage of the urban space according to their prescriptions. [10]

In this regard it interferes in a number of legal-administrative instruments of preliminary control to the requirements of urban planning and landscaping, assents, urbanism certificate and building permits. [11]

Administrative authorizations (broadly): the urbanism certificate and building permit, plus a number of compulsory notices , form the first administrative penalty of the urban planning rules, and in this way targeted lands turning into an official exploitable construction element. [...] Urban administrative authorization procedure involves running several successive phases, completed by drafting and issuing of administrative acts with own purpose and functions: planning certificate, and, respectively, the building permit.[12]

According to art. 6 from Law no. 50/1991 regarding the authorization of construction works, republished [13], the urban planning certificate is the informing act through which the authorities provided at art. 4:

- a). bring forward to the applicant the information concerning the legal, economic and technical drive of the lands and the buildings existing at the request date, in accordance with the urban plans provide and with the related regulations, or with their landscaping plans, where appropriate, approved and agreed according to law;
- b). establish the planning requirements that are to be met according to the location specific;
- c). establish the notices/agreements list of necessary for authorization;
- d). apprise the investor / applicant of the obligation to contact competent authority for environmental protection in order to obtain aspects and, where appropriate, its administrative act, necessary for authorization.

According to art. 28 from Law no. 350/2001 regarding landscaping and urban planning, republished [14], the implementation of the approved landscaping and urban planning documentation is provided by releasing the urbanism certificate.

The object of the urbanism certificate. The character of the urbanism certificate is precisely assigned by art. 29 paragraph (1) from Law no. 350/2001 regarding landscaping and urban planning which sets that: the urban planning certificate represents the binding informing act through which the county or local government bring forward the legal, economic and technical drive of the buildings and the the conditions necessary for the realization of investments, real estate transactions or other real estate operations, according to the law. [15]

According to art. 29, paragraph (2) from Law no. 350/2001 the urban planning certificate must be issued for adjudgement through the auction of the project works and by the execution of the public works, as well as for the elaboration of cadastral documents for the consolidation, or dismantling of the lands in at least 3 plots, when the respective operations have as an object divisions or agglomerations of plots required for the achievement of construction and infrastructure works, as well as setting up a crossing easement regarding a building. [...]

In accordance with art. 29, paragraph (3) the urban planning certificate is issued at the request of each participant, natural and legal person, who may be interested in knowing the data and the regulations which that property is subjected to.

The urban planning certificate does not ensure the construction, landscaping and planting works as stated by art. 29, paragraph (4), but it necessarily contains mentions about the purpose of its release (art. 29, paragraph 5).

In art. 32 from Law no. 350/2001 it states that the urbanism certificate contains the following elements regarding:

a) *the legal status of the property* – the right of ownership over the estate and public utility easements that put pressure on it; the estate position - land and/or related buildings - in town or unincorporated; provisions of urbanism documentation which establish a special regime on the building - protected areas, permanent or temporary building bans - if it is written in the List of the historical monuments in Romania and over which , if sold, it is necessary the exercise of the right of State pre-emption according to law and others provided by the law [...];

b) *the economic status of the building* – current use, the extract from local urban planning statute associated with the urban plan effectual on the issuing date, regarding the functions allowed or prohibited, tax regulations specific to the locality or the area;

c) *the technical status of the building* - extracted from local regulation associated with the urbanism documentation effectual approved, stating the urbanism documentation effectual on the issuing date, the number of the approval decision and, where appropriate, the validity period, the percentage of land occupation, the coefficient of land use, the minimum and maximum dimensions admitted for the plot, the equipment with utilities, constructible admitted for the plot, the movement and the pedestrian and vehicles accesses, the required parking spots, the land and construction alignment towards the adjacent streets, the minimum and maximum allowable height;

d) *the updating/modification of the urban planning documents status and of the related local regulations* - if its intention does not fall under the approved forecasts of the planning documents, informing the applicant regarding:

1 the impossibility to amend the provisions of the approved documentation;

2 the need to obtain an opportunity notice, under the present law;

3 the possibility of developing a modifier urbanism documentation, without an opportunity notice, under the present law.

Taking into account the legal provisions, like: Law no. 50/1991 regarding the authorization for the execution of the construction works, republished, in art. 6, and the following ones, as well as the Law no. 350/2001, regarding landscaping and urban planning, republished, art. 29 and the following, we conclude the existence of two types of urbanism certificates: an informal one (“neutral” or optional) and another one pre-operational, both of them based on the common information assembly. [16]

Neutral urbanism certificate (optional) is, by excellence, an informative one, without showing the conditions necessary for a particular project. It allows the applicant to have a set of information on urban planning law and effective administrative easements, as well as the utilities for the land covered by the application. [17]

Preoperational certificate represents the binding rule, and, in addition to the overall objective to inform on the legal, economic and technical character, provides the conditions necessary to make an investment, a real estate transaction or other estate operations, according to the law. Getting it is mandatory for the adjudgement through auction of the project works and the execution of the public works, as well for the consolidation of cadastral documentation, namely the dismantling of properties in at least three plots [art. 29, para. (2) of Law no. 350/2001]; for the same plot it may be issued more urbanism certificates, but their content , based on the documentation of landscaping and urban planning, as well as other regulations in the field, must be the same for all applicants. [18]

REFERENCES

- [1]. R. Bischin, *Elements of Urban planning law in Romania and European Union, Legislation, doctrine and jurisprudence*, C. H. Beck Publishing House, Bucharest, 2016, p. 121.
- [2]. A. I. Dușcă, *The environment law*, second edition, revised and enlarged, Judicial Universe Publishing House, Bucharest, 2014, p.6 quoted by R. Bischin, *cited work*, p.4-5.
- [3]. *Ibidem*, p.5.
- [4]. The expression was created in 1867 by the Spanish architect *Cerda*, in his *Théorie générale de l'urbanisation*, Paris, 1079, J.L. Harowel, *The urban planning history* (translated by A. Brătuleanu), Meridiane Publishing House, Bucharest, 2001, p. 5, quoted by R. Bischin, *cited work*, p.6.
- [5]. P. Lavedan, *Histoire de l'urbanisme*, Seuil Publishing House, Paris, 1980; L. Munford, *La cité à travers l'histoire*, Seuil Publishing House, Paris, 1964; L. Benevolo, *Histoire de la ville*, Paranthèses, Marseille Publishing House, 1983 quoted de R. Bischin, *cited work*, p. 6
- [6]. F. Choay, *L'urbanisme, utopies et réalités. Une autologie*, Seuil Publishing House, Paris, 1965, p. 8, quoted by R. Bischin, *cited work*, p. 6.
- [7]. R. Bischin, *cited work*, p. 6.
- [8]. M. Dușu, *The Law of Urban Planning*, Fourth edition, Judicial Universe Publishing House, Bucharest, 2009, p. 23
- [9]. *Ibidem*.
- [10]. For general problems of urban planning rules, see: M. Dușu, *The Law of Urban Planning*, Economic Publishing House, Bucharest, 1998, p. 57-106; P. Soler-Couteaux, *Droit de l'urbanisme*, Dalloz, Paris, 1996, p. 45-68, quoted by R. Bischin, *cited work*, p. 108.
- [11]. M. Dușu, *The Law of Urban Planning*, Fourth edition, Judicial Universe Publishing House, Bucharest, 2009, p. 182.
- [12]. *Ibidem*, p.183.
- [13]. 733 Gazette from 30 September 2015.
- [14]. Published in Gazette no. 373 from 10 July 2001, republished in [Gazette no. 204/18 March 2016](#).
- [15]. R. Bischin, *cited work*, p. 121.
- [16]. M. Dușu, *cited work*, p. 190; R. Bischin, *cited work*, p. 122.
- [17]. M. Dușu, *cited work*, p. 191.
- [18]. R. Bischin, *cited work*, p. 123.