

INTERFERENCES OF THE ENVIRONMENTAL LAW WITH THE URBAN LAW

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Abstract:

Addressing the large, complex issue of influences that urbanization can have on the environment, requires first of all, some general considerations on the interferences between the urban law and the environmental law.

The urban law investigates and regulates the affecting and planning of the urban space. Therefore, this type of regulations are at the interference with the environmental law, which, inter alia, deals with the protection and conservation of the environment in the urban settlements, in the built space and also the ecological deployment of the activities in this space. The interaction between the two is becoming increasingly important especially when the urban law is increasingly correlated with the environmental protection, the natural space and the ecological activities.

Key words: environment law, urban law, planning certificate, urban space

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THE DELIMITATION OF THE URBAN LAW FROM THE ENVIRONMENTAL LAW

In the delimitation of the environmental law from the urban law we must start from the object, the method of regulation and the principles of these branches of law. Regarding the object of the environmental law, opinions did not always have a unitary character. Finally, there was imposed a theory that environmental law rules concern the regulation of social relations that arise and evolve in the sphere of creation, preservation and protection of the environment. In a similar manner, the legal doctrine noted that "the object of environmental law are the social relations that are emerging in relation to the environmental protection and creating an appropriate environment, healthy for the humanity". [3]

In achieving its specific mission, this branch of law establishes rights and procedures that guarantee the collective management of the environmental heritage. We use here the term environment in the broadest sense possible, covering the natural patrimony, the biological patrimony, the built, architectural, urban, rural, cultural patrimony, etc..

In these areas there are established interpersonal relationships within the scope of regulation of the environmental law, so from simple social relations they are converted into ratios of environmental law, acquiring the legal form and force engraved by the norms of the environment.

One aspect that needs to be stressed is that the identity of the mentioned branch of law is strongly influenced by the relative uniform character of the social action on the protection of the natural components or the ones created by human activities. Thus, achieving the proposed objectives involve mechanisms, organs, people with clear abilities in the protection of a major public interest. This is why, this branch of law (as the regulations of the urban law) has its place among the public law regulations. As for the method of regulation, it must be considered as a criterion for formation and delimitation of law branches which the state chooses for standardization of various types of social relationships. In the case of the environmental law, this criterion seeks the use by the state of the mandatory rules. The will of the state is imposed to all participants in the environmental law relations. So, the method of regulation of the environmental law requires a subordination of individuals and legal persons to the public authorities, subordination which has

certain specific nuances because, in the environmental law reports, the common purpose of the whole society is pollution prevention, environmental conservation and improving its quality.

The principles governing the relations regarding the protection, conservation and development of the environment also present some specific notes imposed by the social mission of this branch of law. Some principles are specific to it (such as the polluter pays principle), others are "borrowed" from other branches of law that the environmental law interferes with, especially administrative, civil, urban or international law. Regarding the suggested objectives we will insist, in particular, on the interferences of environmental law and urban law, which led to the "transformation of nature protective measures in a new instrument of a new town-planning particularly focused on the optimization of life framework" [2].

Regarding community law it must be noted that the EU Urban Agenda allows among other policies (socio – economic cohesion, growth of employment and innovation) and implementation of environmental policies in urban areas as major sources of pollution, but also in the regions most affected by the impacts of human activities, in the cities where the environment is protected (energetic efficient with clean water, clean air, open available spaces suitable for living) contribute to the achievement of the environmental objectives of the European Union [12].

Space development and town-planning represent complex activities aimed for physique organization of space. In this regard, regulations give shape to some policies in this area (economic, social, environmental, cultural) that have as central point the limitation of urban pollution, development and protection of physical elements and the natural frame. Urban regulations, policies and urban development strategies are focused on establishing some urban regulations regarding issues about urban and territorial management (how to ensure a harmonious development of towns) and on the report between the built space and the natural environment. Also, the ways in which we have to preserve the environment with all its components must be identified.

By applying the concepts and laws of ecology it was crystallized, in the urban area, the concept of "artificial urban ecosystem" inspired from the natural ecosystem. Regarding the legal rules of urbanism, it should be noted that they were, in time, submitted to a process of "greening" by broadening and deepening the process of direct or indirect settlement of the protection and conservation of nature (including components related to the urban area).

We can observe, therefore, a collaboration of the two sets of rules to achieve common goals. Thus, certain measures taken for the protection, conservation and development of the natural environment were constituted in "veritable renewal instruments of a concerned town-planning, in particular, of optimization of life". [4-5]

As it is known, providing a high quality urban environment requires, in addition to measures to prevent the depreciation of the natural environment and measures for protection and rebuttal of pollution, both general and sector level.

Therefore, the legal rules adopted for this purpose, become true commands also for the town-planning law.

The coordinates of the town-planning law must enroll in the general efforts to prevent and rebut pollution, to conserve and develop the quality of all environmental factors whether they are in the urban area or they exceed it.

The prevention and rebuttal of phenomena that affected the natural environment through urban planning are circumscribed to general requirements established by the Constitution of the country, and also by detail regulations [7-8]. Very important, for the aspects in question, are the regulations regarding construction activities in human settlements (in general) in urban areas, in particular.

Important legal provisions regarding the location, design, construction and exploitation of constructions are summarized in the Land Fund Law no. 18/1991, as amended. Article 91 of the law provides that the location of the new constructions of any kind shall be made within towns. It is a rule which admits some exceptions with the purpose of protecting the natural environment. Therefore, the buildings which by their nature or the activities may generate pollution effects to the environmental factors will be located outside the city (excepting the areas specifically designated in

the General Urban Plan in town), based on prior studies of environmental impact , approved by the authorities responsible for environmental protection.

But even in these cases , houses built outside the city must comply with the provisions of Law no. 18/1991 which prohibits the placement of any construction on agricultural land grade I and II of quality, those made with territorial improvements and those planted with vineyards and orchards or that include: national parks , reserves , monuments , archaeological and historical ensembles .

It is permissible, however, the building of some constructions on the lands mentioned above if they serve to agricultural activities, have military destination or serve as support to: railways, important roads, high voltage power line, works of drilling and equipping wells, works related to the exploitation of oil and gas, pipelines transporting gas or oil, or works of water management or works for water sources.

For shaping the legal regime of location, design, execution and exploitation of buildings, the provisions of Law no. 50/1991 on the authorization of construction and some measures for housing are particularly important.

Article 1 of the mentioned law provides that all civil engineering , agriculture or any kind may be made only in compliance with the building permit is conditional upon the certificate of urbanism.

The issuing of the planning certificate is based on data extracted from the existing urban documentation (General Urban Plan, Zonal Town-planning Plan , The Detailed Urban Plan) but also the duty of the applicant to contact the regional environment authorities for it to analyze and decide as appropriate the abiding/ non-abiding of the project / public/ private investment in the list of projects submitted to environmental impact assessment [11] . In agreement with the European Union directives, the procedure for issuing the environmental agreement takes place after the issuance of the Certificate of Town-planning, but previous to submitting the documentation for authorization of constructions in the competent public administration authority. The building permit, in this case, will be issued only in terms of obtaining the environmental approval and other approvals required by the town-planning certificate. To meet the requirements of the procedure for issuing the environmental agreement, the authority competent for the environmental protection sets a mechanism to ensure public consultation, the centralization of the options of the public and the formulation of an official view on the realization of investments in accordance with the results of public consultation.

In this area, based on internal and community regulations there was issued The General Town-Planning Regulation (as normative document) .

Besides the strict and limited exceptions provided by law, The General Town-planning Regulation is applied to the design and construction of all buildings and facilities, located on any category of land (within or outside the city limits).

Some provisions of the Town-planning Regulation concern farmlands. If appropriate, by the permit to build, farmlands could be removed temporarily or permanently from the agricultural circuit, to be designed for construction. The necessary condition is to assure the natural heritage and its integrity.

Of major importance are the provisions which establish prohibitions of constructions approval and urban facilities on certain categories of land expressly provided by art. 5 paragraph 1 of the General Town-planning Rules.

1) It is forbidden, according to the mentioned rules, the authorization of building constructions and facilities on the forest lands. Prohibition does not work for approvals, by authorities of public administration specialized on the maintenance of forests, forest exploitation and forest crops. Of course, the location of such construction brings in question the decommissioning of an area of forest crop, which must not be disproportionate to the needs of construction and use of buildings.

2) It is prohibited to authorize the execution of some final constructions (others than industrial) needed to resource exploitation and processing in identified areas of soil. Some

clarifications are necessary for the identification of some resource areas in the towns, when the exploitation presents some specific issues as an impact research.

3) It is prohibited the authorization of any construction in the minor beds of the rivers and lake basins. The ban does not cover the bridge works, to the necessary works on railways, land roads, crossing riverbeds, water management. In these latter cases the authorization is conditioned by the counsel of the mayor of that village and the counsel of the authorities competent in the field of water management. The appropriate measures for constructions for flood defense, protection of ground and surface waters against pollution.

4) It is prohibited the authorization of constructions and facilities in areas exposed to natural hazards, through natural risk, understood in the sense of Town-planning Regulation: landslides, quicksands, torrents leaks, soil erosions, avalanches of snow deployments of rocks, floods etc. In each county, the delimitation of areas prone to natural risks is done by specialized people, with the counsel of the competent public authorities. Prohibition does not work on those facilities or constructions designed to prevent or limit the effects of such natural hazards.

5) It is prohibited the authorization of any urban construction or facility in areas exposed to technological risks. The categories of constructions with technical risk are determined by common order of the Minister of Waters and Environmental Protection, the Minister of Health, Minister of Transport, Minister of National Defense and Interior Minister. The general town-planning regulation specifies that technological risks are caused by industrial or agricultural processes that present a danger of fire.

6) It is prohibited the authorization of constructions of any kind in areas of protection of weather platforms, without the prior approval of the competent authority for environmental protection.

7) It is prohibited the execution of construction or facilities in national parks, natural reserves and other protected areas, of national interest, defined by the law, without the approval of the Ministry of Waters and Environmental Protection, Ministry of Public Works, Ministry of Transport.

CONCLUSIONS

From the above mentioned we can conclude that for reasons related to the protection and preservation of the natural environment and created, The General Town-planning Regulation imposes certain restrictions that appear as exceptions to the rule that, under the law, the location of buildings and their facilities can be made on any land.

As for the interferences of environmental law and town-planning law, it is noted that the development of a urban policy and strategy we must consider the priority measures to reduce pollution and protection of all environmental factors, regardless of their location [6].

At the same time, ensuring a high quality urban environment is conditioned by certain measures to prevent and rebuttal of pollution regardless the sources, of its general radical reforms, with an impact on eliminating the negative influences of disturbances of the ecological balance.

ENDNOTES

(1). F.Făiniș, "Environmental Law" Pinguin Book Publishing House, Bucharest, 2005, p.42, M.Duțu, Town-planning law, fifth edition, Universul Juridic Publishing House, Bucharest, 2010

(2). M.Duțu, "International and Community Law of the Environment" Economic Publishing House, Bucharest, 1995, p.59.

(3). Sustainable Cities. Financing Sustainable Urban Development approach the EIB Group approach. Ministerial Meeting on Sustainable Communities in Europe Bristol December 6-7. European Investment Bank 2005, p 4.

(4). Regarding the report between the built space and the natural environment, we mention that it is in the General urban plan of each city

(5). Daniela Marinescu , "Treaty of environmental law " , All Beck Publishing House , Bucharest, 2003 , p 83.In the same regard , see Daniela Marinescu , "Treaty of environmental law " – second edition , revised and enlarged , Universul Law Publishing House, 2007.

(6). For general regulations we recall law no.137/1995 on environmental protection and Emergency Ordinance no.195/2005 regarding the environment protection , approved by Law no. 265/2006 published in Official Monitor no. 88 from 2006. Regarding the town-planning we remember Law no.350. General regulations we remember Law no.137/1995 regarding the environmental protection and Emergency Ordinance no.195/2005 , approved by Law no. 265/2006 published in the Official Monitor no. 88 from 2006. Regarding the town-planning we remember Law nr.350. For general regulations we remember Law no.137/1995 regarding the environmental protection and The Emergency Ordinance no.195/2005 regarding the environmental protection , approved by Law no. 265/2006 published in The Official Monitor no. 88 of 2006. Regarding the town-planning, we remember Law no.350 from 6th of July 200 , published in Official Monitor No . 373/10 July 2001.

(7) Article 70 of Law no. 18/1991

(8) Article 71 of Law no. 18/1991 , published in the Official Monitor No .1/5 January 1998.

(9) Article 80 and 81 of Law no. 18/199 , published in the Official Monitor no.1/5 January 1998.

(10) The Council Directive 85/337/EEC 9 The EIA Directive on the evaluation of certain public and private projects on the environment as amended by The Council Directive 97/11/ICE on participation of the public in developing certain plans and programs relating to the environment .

(11). The competent authority is the National Administration of Meteorology and art . 19 of Law no. 139/2000 - on the meteorological activity.

(12). For details on the development of environmental policies and strategies , see V.Rojonschi , F.Bran , " Environmental Policies and Strategies " , Economic Publishing House , 2012 .

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- [6] . V.Rojonschi , F.Bran , *Environmental policies and strategies* ,(2012), Economic Publishing House , Bucharest ;
- [7] . Law No.137/1995 regarding the environmental protection and Emergency Ordinance no.195/2005 regarding the environmental protection, approved by Law no. 265/2006
- [8] . Law Nr.350 of 6th of July 2001 on spatial planning and town-planning;
- [9] . Law no. 18/1991 on the land fund
- [10] . The Council Directive 85/337/EEC 9 EIA on the evaluation of certain public and private projects on the environment
- [11] . The Council Directive 97/11/ICE on public participation in the development of certain plans and programs relating to the environment
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