

The influence of Urban Law on the physiognomy of the city

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Abstract: - Law imposes rules which define a legal behaviour of a nation organised in a society. Legal, ethical or written rules derive from myth, customs or religion and express ethnological, religious, cultural, political, social and financial conditions together with each society's special characteristics which leave proportionally their mark on the urban landscape.

At first the paper analyses urban legal rules with an impact on the physiognomy of the city, such as those referring to the protection of architectural heritage, industrial sites, the building coefficient, the city density, billboards and things subject to public use. Urban rules will be examined separately according to their implementation field, national and local. Secondly the paper examines the jurisprudence of the Greek Council of State over the protection of the built environment and the city landscape.

Throughout the paper will be given examples of the implementation of the above legal framework and jurisprudence on the Olympic city of Athens. The aim and originality of our study consists in showing the influence of urban statutes on the physiognomy of the city by presenting a methodology dividing the city in three separate levels: the horizontal level, the vertical one and the inclined one.

Key-Words: - urban legal framework, physiognomy of the city, city levels, protection of the environment, protection of architectural heritage.

1 Introduction

Law imposes rules defining the legal behavior of a nation organised in society. Legal rules, deriving from myth, habits or religion, express ethnological, religious, cultural, political, social and economic conditions along with each society's specific features, which leave their mark on the city landscape and its physiognomy.

In ancient Greece and specifically in Athens politics and philosophy were the main social factors evolving man's spirit and civilisation. The organisation of the city space, together with social structure were directly influenced by politics and philosophy, given the interaction between political institutes and their location [1].

In the Greek city, the "polis", the collective conscience of citizens was formed by the contribution of divine or human rules, written or not. The "polis" was a place, "topos" doted with "logos" and of its proper myth, "mythos" [2]. The citizen was the actor of democratic society where politics and management

of common affairs constituted the main civil duties. In that context civilisation was formed by cultural and spiritual works as a result of the synthesis of the city's ideology and various activities[3]. Civilisation, which differed according to the legal rules of the political regime and the ideology of the citizens, marked the landscape; therefore differences between the civilisation of Athens and that of Sparta were expressed respectfully on their landscape. The physiognomy of the aforementioned cities was strongly influenced by the above parametres and mainly by legal rules, for according Aristotle "order becomes law".

The physiognomy of the city refers to its uniqueness, formed by the conceptual image of the city; therefore the physiognomy comprises all conceptual images by means of the five senses along with the sentimental and rational conception of the elements of the city.

In order to assess the contribution of urban rules on the protection of the physiognomy of the city we divide the later in three levels:

- a) **The horizontal level**, upper and low; the upper horizontal level refers to the city sky-view, billboards and various constructions on the roof, whereas the low one includes plots, things subject to public use such as streets, squares and arcades, shop windows and signs, monuments, protected sites, dustbins, letterboxes etc.
- b) **The vertical level**, which refers to the height, the facade and architectural mode of buildings, balconies and eaves.
- c) **The inclined level**, which is relevant to the slopes and ramps of the city and to buildings' ramps and facades [4].

The paper comprises two parts. First it analyses how the physiognomy of the city is influenced by legislation and further by jurisprudence, with references to the Greek experience.

2 The influence of the constitutional and legal framework concerning urbanism on the physiognomy of the city

Urban rules, prescribed in laws and decrees, referring to a national level are further specified in a local one.

2.1 National rules

Built and natural environment are strongly protected by the Greek law and order. According to the Hellenic Constitution [5] "The State bears responsibility for taking every measure necessary for the protection of natural and cultural environment in the context of the principle of sustainable development"[6]. Moreover the environment, natural and cultural, is protected by both Public and Private Law as a human and civil right. On the other hand land planning, town planning and city policy in general, lie with the regulatory competence of the State [7]. Thus the above provisions are imposed on all three powers of the State, marking strongly the limits of legislator's initiatives and the discretionary power of the Administration on land and town planning; at the same time the judiciary is obliged not to implement provisions opposed to the letter of the Constitution. Consequently the powers of the State should orientate themselves towards the protection of the physiognomy of the city through techniques and methods such as the renovation and "reconquest" of the urban tissue.

In this context the Greek legislator adopted general statutes on land and town planning and on the protection of natural environment, cultural and

architectural heritage within the scope of sustainable development.

2.1.1 Land planning

Two statutes were voted concerning land planning. The first one [9], not implemented though due to the lack of political will, provided for the institutional framework for the elaboration and implementation of relevant plans. The second one, voted [8] twenty years later, set the updated general principles on contemporary land planning adapted to the European prerequisites taking under consideration the role of Greece in expanded E.U. space; therefore according to the latter statute regional plans have already been approved and a national land plan is currently under elaboration.

2.1.2 Town planning

A series of urban laws has been voted by the Greek Parliament including general planning and development rules on a national scale[10]. The legal framework in effect provides for the elaboration of the following planning means:

a) Master Plans and Plans for the Protection of the Environment, which determine the fundamental orientations of land planning and the development of communities with similar economic and social interests, in the scope of achieving a balance among urban expansion, rural activities, various economic ones and the preservation of sites and landscapes, either urban or natural.

b) General Urban Plans, compatible with Master Plan orientations, which set the general framework both in land planning and in the development within the community boundaries and prescribe land use.

c) Local Urban Plans, which specialise General Urban Plan general provisions in a local scale.

Moreover the Greek legislator provided for Land and Urban Development Plans for regional communities not included in any other plan.

The aforementioned legal framework is orientated towards sustainable development in conformity with European environmental policy [11]. As will be further demonstrated the above legal framework influences the three city levels.

Besides among national urban rules are included those relevant to different building systems, the maximum height of buildings and the building coefficient as prescribed in the General Building Regulation [11], with a direct influence on all three levels of the city.

2.1.3 Joint ownership

A similar direct effect on all three city levels and consequently on the townscape is produced by provisions on horizontal and vertical division of immovables allowing joint ownership of the common parts of the plot and separate ownership of apartments or various buildings on the same plot [12]. Thus is created the legal framework for building blocks of flats, commercial centres and building complexes with mixed land use responding to the various needs of contemporary metropolis.

2.1.4 The protection of the environment and architectural heritage

Since the foundation of the Hellenic State the legislator has voted a series of statutes aiming at the protection of antiquities, monuments, historic cities, buildings and other elements presenting a historical or architectural interest [13]. Besides in the General Building Regulation are included provisions concerning scheduled buildings and protected sites. The protected object has been expanded from monuments of the antique era to those of contemporary history, from works of art *stricto sensu* to their surroundings, from immovables to elements of cultural heritage, comprising even monuments of foreign cultures, songs and festivals. Meanwhile the approach of the protection of architectural heritage has evolved from the rehabilitation to the “reconquest” of the restored site or building by inserting them into their social environment [14]. These rules are expressed both on the low horizontal level of the city and on the vertical one, whereas restrictions on building height affect the upper horizontal level.

Similarly environmental control of works and activities, studies of environmental impact for the most polluting ones and special environmental studies over protected areas for their natural landscape influence the horizontal and inclined level [15]; e.g. in case of activities damaging parks and city slopes.

2.1.5 Other provisions

There are also numerous provisions concerning billboards, affecting all city levels. Furthermore the horizontal level of the city and the physiognomy of the latter in general are influenced by coffees, restaurants, shops and open markets.

Among the fore-mentioned rules those relative to town planning exert the most decisive and direct influence on the townscape, whereas the provisions on the protection of the environment and architectural heritage act in a reactive- protective way; therefore the relevant rules are interesting mainly because of the rich jurisprudence on the matter.

2.2 Local rules

Master Plans, General Urban Plans and Local Urban Plans are elaborated for the implementation of the above legal framework. Master Plans affect all three city levels, since they prescribe a complete plan for the development of a region, including various productive sectors, transports and social equipment, taking also under consideration the protection of the environment, cultural heritage and the national regional planning policy of Greece as a member of the E.U.

The influence of the first ones is more direct on the physiognomy of the city, for these plans are elaborated on a community scale, taking into account important cities according to the Master Plans general orientations. The second ones fix rules concerning density, land use, general building conditions, protected sectors and sites, monuments and sectors of urban renovation.

Finally Local Urban Plans specify and apply General Urban Plans rules. Local Urban Plans include rules over building height, the situation of constructions, the building coefficient, land and building use, parking areas and renovation sectors.

Thus their influence is decisive and direct on all three levels of the city.

The territory of Greece is divided in regions doted either with a General Urban Plan and a Local Urban Plan or with a Land and Urban Development Plan for regional communities not included in any other plan. For the latter ones special restrictions on construction and land uses apply. Moreover metropolitan areas, like those of Athens and Salonica, have a Master Plan [16].

Athens Master Plans aims were achieved in a great deal on the occasion of the Athens 2004 Olympics with the emphasis given on showing off the physiognomy of the city. In 1997 “Unification of Athens Archeological Sites S.A.” was created both by the Ministry of the Environment and Public Works and the Ministry of Culture. The above company has undertaken the most important urban renovation of Athens; among its accomplishments should be outlined the creation of a pedestrian area unifying the most important monuments of the city and the removal of billboards from some of the main streets and squares of Athens. During the same period the traditional commercial centre of Athens was declared an historical area, land use was modified and a pedestrian commercial triangle was created. Furthermore the Municipality of Athens has undertaken a project of renovation and painting of building facades with a significant impact on the physiognomy of the city centre.

In 2001 the Greek legislator voted a statute on Olympic works and infrastructure [17], which has both improved and shown off the physiognomy of the city

of Athens according to the needs of the new role of the Greek capital as a multiracial metropolis of Southeastern Europe. The legal framework provided for: **a)** reconstruction and reanimation of the Athens coast line; **b)** urban renovation of the city centre; **c)** painting of the building facades; **d)** illumination of monuments, of the most characteristic buildings and the main streets of Athens; **e)** remodelling of the premises of Olympic venues; **f)** extension of the Underground combined with a state-of-the-art suburban railway and a tramway connecting the city centre to the coast line; and **g)** extension of the Athens ring road. This law accelerated the realisation of the goals of both Athens Master Plan and “Unification of Athens Archeological Sites S.A.”. The Olympic heritage of the city of Athens is now expected to be incorporated in the city life according to a new law in which the emphasis will be given on sports, tourist and commercial use, recreation and housing policy.

Apart from the contribution of the legal framework on the physiognomy of the city, the latter is equally influenced by the Council of State’s (SE) jurisprudence on the protection of the urban landscape.

3 The influence of the Council of State’s jurisprudence concerning the protection of the urban landscape on the physiognomy of the city

Jurisprudence has played a main role in showing off the physiognomy of the city, since Court decisions have introduced most of the principles related to sustainable development of cities and the protection of architectural heritage.

3.1 The jurisprudence on sustainable development of cities

In the absence of constitutional or legal provisions concerning sustainable development the Council of State has introduced the above principle since the early 90’s. Greek jurisprudence has imposed sustainable development especially to control development in tourist resorts [18], where financial and tourist interests often damage the environment. On the city level sustainable development is divided in more specific principles such as “space capacity” and the “urban sustainable environment”. According to the first one cities and tourist resorts development as well as the exploitation of sensitive natural resorts must conform with the “natural potential” of the place [19]. Besides the doctrine partly supports that cultural elements should also be taken into account. This jurisprudence applies mainly on the Cyclades, where

Special Land Plans are elaborated including the definition of Controlled Town Planning Zones. The above planning means have an effect on all levels of insular towns and villages and constitute a prerequisite for the protection of the urban landscape of the Cycladic islands [20].

The principle of the “urban sustainable environment” aims at reestablishing the quality of city life, mainly in big metropolis, by means of a balanced distribution of land use and economic and social activities, taking under consideration urban sustainable development [21]. This principle imposes conformity of various planning means, rationalisation of city plans, safeguarding of natural environment and sustainable mobility in the urban network [22].

Furthermore the Council of State’s jurisprudence on the sustainable development of cities has created two major constitutional principles: the preservation of “urban and environmental *acquis*”.

The urban *acquis* prohibits any further degradation of the urban environment, allowing only improving measures of life quality [23]. Similarly the environmental *acquis* does not allow any degradation of the natural or cultural environment [24].

The aforementioned principles have considerably influenced the Greek legislator, who adopted measures protecting and showing off the physiognomy of the city. Moreover following the initiatives of the Council of State, the principle of sustainable development was established by both the Greek legislator in 1997 and the revised Constitution in 2001.

Because of their general character these principles influence all city levels insisting as well on the protection of the aesthetic aspect of the city [25].

3.2 The jurisprudence on the protection of architectural heritage

The Council of State’s jurisprudence has always been in favour of an extensive interpretation of architectural heritage. Thus, even ante the adoption of a similar position by the legislator [26], according to the Council’s decisions the protective object had already included monuments and any work of human activity contributing to the historic, artistic, technological and cultural heritage [27]. Furthermore the protection of the aesthetic aspect of protected sites and elements of a particular architectural or natural value is recognised as a constitutional principle, just like the aforementioned urban “*acquis*” [28].

This jurisprudence influences in particular the low horizontal level, e.g. street furniture, the upper horizontal one, e.g. the obligation to preserve tiled roofs and the prohibition of TV aerials, the vertical

one, e.g. building facades and finally the inclined one, e.g. the protection of city slopes.

4 Conclusions

By way of summing up the impact of Urban Law on the physiognomy of the city we could say that the above influence is proportionate to the content and the national or local range of each urban rule.

First most of national urban rules and the General Building Regulation affect all city levels, since these provisions have a wide content.

Local planning rules apply as well to all city levels, for they define urban development and building specifications. The examined influence varies though according to the content and object of local planning provisions and means; e.g. those concerning land use affect the horizontal city level whereas building restrictions influence the vertical, the inclined and the upper horizontal ones.

Furthermore rules over the protection of the environment and architectural heritage are expressed in all city levels since they protect and show off natural, historic, architectural, cultural and artistic elements as well as local characteristics forming the physiognomy of the city.

Finally the principles on sustainable development of cities, introduced by Court decisions, led to an extensive interpretation of relevant constitutional provisions; therefore the physiognomy of the city is now considered by Greek jurisprudence as a protective object, which forms the conceptual image of the urban landscape and treats the city as a work of art.

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- [6] Section 24 of the Hellenic Constitution.
- [7] Section 24 of the Hellenic Constitution.
- [8] Law 360/1979.
- [9] Law 360/1979.
- [10] Law 2508/1997
- [11] The General Building Regulation of 1929 was amended in 1955, 1973, 1985, 1988 and in 2000.
- [12] Law 3741/1929 and Legislative decree 1024/1971.
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- [24] See, SE (full bench) 10/1988.
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