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Review Article

Conditions Regarding the Cancellation of the Planning Certificate

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Abstract

Given that the urban planning certificate is issued by the local public authorities based on a documentation provided by law, upon request, to any applicant - natural person or legal entity -, this article presents the legal entities entitled to request the cancellation of the urban planning certificate, in accordance with the provisions of Law no. 554/2004 of the administrative litigation. The topic of the article is important in judicial practice given that, in essence, urban planning legislation can limit the exercise of property rights by referring both to the public interest, but also by referring to the private interest, generating disputes between the subjects of the legal relationship.

Keywords: Urban planning certificate; Assimilated administrative act; Prohibition to build; Beneficiary

General Aspects Regarding the Purpose of Public Authorities in Issuing the Urban Planning Certificate

In order to ensure the coherent, balanced and sustainable development and use of the territory, in accordance with the general interest provided by law, the authorities of the central, county and local public administration, through the activity of urban planning and territorial development, have the obligation to ensure and regulate the framework of this development, both by harmonizing urban planning documentation with the provisions of the law, and by spatial management of the country's territory, in relation to the continuous dynamics and perspective of the development of society from an urban point of view [1].

The purpose of this harmonization of urban planning documents, in relation to the general superior interest provided by law and in relation to balanced spatial development, has in mind the protection of the natural heritage, but also of the built one, the improvement of living conditions in urban and rural localities, as well as ensuring territorial cohesion at regional, national and European level, so as to ensure citizens and communities: the right to efficient, fair and responsible use of the territory, adequate living conditions, the quality of architecture, the protection of the architectural, urban and cultural identity of urban and rural localities, working, service and transport conditions that respond to the diversity, needs and resources of the population, reducing energy consumption, ensuring the protection of natural and built landscapes, preserving biodiversity, creating ecological continuity, public security and sanitation, rationalizing travel demand [2].

The main purpose of the urbanism field is to stimulate the complex evolution of localities, by elaborating and implementing strategies for spatial, sustainable and integrated development, in the short, medium and long term, aiming to establish the directions of the spatial development of urban and rural localities, in accordance with the economic potential, social, cultural and territorial and with the aspirations of the inhabitants [3].

The public authorities provided for by law, in fulfilling their duties in the field of territorial planning and urban planning, draw up territorial planning plans - at the county level - and urban planning documentation. Within the local public authorities, the local council is responsible for coordinating and being responsible for all urban planning activities carried out on the territory of an

administrative-territorial unit. In addition, the local council ensures compliance with the provisions contained in the approved spatial planning and urban planning documentation, for the realization of the urban development program of the localities that are part of the commune or city, cooperating with the county council in the spatial planning and urban planning activity [4].

The urban planning documents, the general urban plan, the zonal urban plan and the detailed urban plan together with the related local urban planning regulations, after approval according to the procedure provided by law, are open to legal action, [5] becoming acts of normative public authority [6], being used for the issuance of town planning certificates and the issuance of building permits for the objectives in the area that is the subject of the relevant town planning documentation [7].

The Purpose of the Urban Planning Certificate

Only on the basis of a construction or demolition authorization - final act of authority of the local public administration issued on the basis of the documentation provided by law - is it allowed to execute or dismantle construction works, in relation to the legal provisions regarding the location, design, realization, exploitation and post-use of constructions and in relation to the provisions of urban planning documentation, approved and approved.

The procedure for authorizing the execution of construction works begins with the submission of the application for the issuance of the urban planning certificate in order to obtain, as a final act, the building permit [8], at the request of a real right holder over a building - land and/or buildings - identified by cadastral number, if the law does not provide otherwise.

First, the urban planning certificate is defined as an information document through which the authorities provided by law:

a) Make known to the applicant the information regarding the legal, economic and technical regime of the land and constructions existing at the date of the request, in accordance with the provisions of the urban plans and their related regulations or of the land development plans, as the case may be, approved and approved according to the law;

b) Establish the urban planning requirements to be fulfilled depending on the specifics of the location;

c) Establish the list containing the necessary notices/agreements in order to authorize the execution of construction works;

c^1) indicates by name the operators of technical-building networks that will issue the respective notices/agreements; the approvals will be requested only from the owners of above-ground and underground networks that affect the land surface and/or constructions for which urban planning certificates are requested, with the consultation of the urban database established under the law;

d) Informs the investor/applicant about the obligation to contact the competent authority for environmental protection, in order to obtain its point of view and, as the case may be, its administrative act, necessary for authorization [9].

The Issuer of the Urban Planning Certificate

The urban planning certificate is issued by the county or local public authorities, based on a documentation provided by law and does not confer the right to carry out construction works.

According to the provisions of art. 4 of Law no. 50/1991 regarding the authorization of the execution of construction works, republished, with subsequent amendments and additions, urban planning certificates and building authorizations are issued by the presidents of the county councils, by the general mayor of the municipality of Bucharest, by the mayors of municipalities, sectors of the municipality of Bucharest, cities and communes for the execution of the works defined in art. 3 of the Law, they having the passive procedural quality within a litigious legal relationship, as follows:

a) The presidents of the county councils, with the approval of the mayors, for the works being carried out:

1. On lands that exceed the limit of an administrative-territorial unit;

2. In the intra-village and extra-village of administrative-territorial units whose town halls do not have any employees - civil servants with attributions in the field of urban planning, territorial planning and the authorization of the execution of construction works, in the specialized structures organized according to the law;

a^1) the presidents of the county councils, with the prior approval of the secretary of the administrative-territorial unit or of the person appointed by the prefect under the terms of GEO no. 57/2019 on the Administrative Code, with subsequent amendments and additions, in exceptional situations where the works are carried out on buildings located within the administrative-territorial units where the local council is dissolved and the mayor cannot exercise his powers:

1. Because of the termination or suspension of the mandate in accordance with the law;

2. in the situation where preventive measures have been ordered against the mayor according to the criminal law, other than those that determine the suspension of the mandate and that make it impossible for him to exercise the powers provided for by law;

b) By the mayors of the municipalities, for the works that are

performed in their administrative territory, except for those provided for in letter a) point 1;

c) The general mayor of the municipality of Bucharest, after he has requested the opinion of the mayors of the sectors of the municipality of Bucharest, for:

1. The execution of construction works for investments that are carried out on lands that exceed the administrative-territorial limit of a sector and/or that are carried out outside the village;

2. Construction, reconstruction, extension, repair, consolidation, protection, restoration, conservation works, as well as any other works, regardless of their value, which will be executed on: buildings, constructions or parts of constructions together with installations, artistic components, part integral of these, together with the related topographically delimited land, including their annexes, as well as other constructions, identified within the same building, individually classified as a monument according to Law no. 422/2001 on the protection of historical monuments, republished, with subsequent amendments and additions, buildings, land and/or buildings, identified by cadastral number, located in protected built-up areas established according to the law, buildings of special architectural or historical value, established by urban planning documents approved, real estate, land and/or buildings, identified by cadastral number, included in the parcels included in the List of historical monuments;

3. Modernization, rehabilitation, expansion of municipal building networks, underground or surface urban transport, transport and distribution for: water/sewer, gas, electric, heating, communications - including optical fiber, executed on the public or private domain of the municipality Bucharest, as well as street modernization and/or rehabilitation works, which are under the administration of the General Council of the Municipality of Bucharest;

d) By the mayors of the sectors of the municipality of Bucharest, for the works that are carried out in the administrative territory of the sectors, with the exception of those provided for in letter c), including historical monuments in the category of ensembles and sites.

e) Mayors of administrative-territorial units that have employees in the specialized apparatus - civil servants with attributions in the field of urban planning, territorial planning and the authorization of the execution of construction works for the works being executed;

1. In their administrative territory, with the exception of those provided for in letter a) point 1;

2. To the constructions representing historical monuments classified or in the classification procedure according to the law, located on the administrative territory, under the conditions of art. 10 lit. a) And of art. 45 para. (4) And with the approval of the chief architect of the county.

In addition to these provisions, we also note the incidence of the provisions of art. 155 para. 5 lit. g) From the Government's Emergency Ordinance no. 57/2019 on the Administrative Code, with subsequent amendments and additions, according to which the mayor acquires an extended competence, recognized by law, being the local, executive and uninominal public authority that issues administrative acts in the field of authorization of construction works. As such, it also fulfills duties regarding the public services provided to citizens, of local interest and issues notices, agreements and authorizations given in its competence by law and other normative acts, after the verification and certification of these documents by the specialized departments from the point of view of regularity, legality and meeting technical requirements.

Although the urban planning certificate is signed by the president of the county council or by the mayor, as the case may be, by the secretary and the chief architect or by the person with responsibility in the field of territorial development and urban planning from the own apparatus of the issuing public administration authority, within the legal report litigious, the procedural capacity is held by the president of the county council or by the mayor of the local public authority, as the case may be [10].

The Beneficiary of the Urban Planning Certificate

According to the legal provisions, the town planning certificate is issued, upon request, to any interested applicant - natural person or legal person - without the need to present the title to the building or any other document certifying the right of ownership, since the rationale of the legislator is that the urban planning certificate is an information act, which does not give the applicant the right to carry out construction/demolition works. [11] However, often in the practice of local public authorities, it is requested to issue an urban planning certificate including proof of title to the building or an updated information land book extract, similar to the procedure for issuing a building permit.

The Urban Planning Certificate - Assimilated Administrative Act

According to the provisions of art. 1 Paragraph 1 of Law no. 554/2004 on administrative litigation, with subsequent amendments and additions, any person who considers himself injured in a right or in a legitimate interest, by a public authority, through an administrative act or by not resolving within the legal term a request, can be addressed to the competent administrative court, for the annulment of the act, the recognition of the claimed right or the legitimate interest and the reparation of the damage caused to him, after formulating a prior complaint under the

conditions provided by art. 7 of the same normative act.

According to Civil Decision no. 27/06.11.2017 of the High Court of Cassation and Justice, the Panel competent to judge the appeal in the interest of the law, published in the Official Gazette no. 194 of March 2, 2018, the urban planning certificate acquires the legal nature of an assimilated administrative act, provided that it either includes the prohibition to build, or contains other limitations, or the information contained in one of the three regimes (legal, economic or technical) can constitute grounds for exercising the control of legality if an injury occurs due to the limitations or conditions imposed, determining the impossibility of the beneficiary applicant to continue his approach to obtain the building permit, under the conditions he wants.

We thus reproduce some of the considerations of Civil Decision no. 27/06.11.2017 pronounced by the High Court of Cassation and Justice, the Panel competent to judge the appeal in the interest of the law:

"Point 48. However, when due to its concrete content, through the prohibition of construction or through the limitations it contains, the urban planning certificate is no longer susceptible to being followed by the issuance of a construction authorization, the legal effects it produces acquire a meaning on its own, giving the town planning certificate the characteristics of a genuine administrative act, in the sense of the legal definition cited above. It is no longer a question of a simple stage in the decision-making process, as happens in the case of preparatory acts, but of an act that puts an end to this process, the possible damage to the rights or legitimate interests of the petitioner having its source precisely in the respective urban planning certificate.

Point 49. Consequently, given the legal nature of an administrative act that the urban planning certificate acquires, which, due to the prohibitions or limitations it contains, is no longer susceptible to being followed by the issuance of a building permit, the annulment action formulated exclusively against this act is admissible.

Point 52. Concretely, with regard to the urban planning certificate that contains the ban on construction or other limitations, it would not be possible for the injured person to complain only about the re-use, which is implicitly deduced from the content of the certificate issued in this form, to issue a town planning certificate with a different content, but the action must be directed, first of all, against the certificate already issued and only subsequently to request the issuance of a new certificate with an appropriate content.

Section 54. For example, if the certificate contains certain details regarding the technical regime or a certain list of approvals for which the issuance of the building permit is conditioned, there cannot be any refusal to settle a request and, with despite all this, it is possible that the beneficiary considers himself injured as a result of the limitations or conditions imposed by the respective act and finds himself unable to continue his approach to obtain the construction authorization under the conditions he wants.

Pct. 55. From the perspective of these arguments, the legal nature of the administrative act of the urban planning certificate that ordered the prohibition to build or that contains other limitations is retained, as it is possible, as a consequence, to exercise, by the competent administrative court, of the legality control of this act."

Distinct from the situation analyzed under Civil Decision no. 27/06.11.2017 pronounced by the High Court of Cassation and Justice, the panel competent to judge the appeal in the interest of the law, we appreciate that if a third party who considers himself injured in a right or in a legitimate interest addresses the court of contention administrative in order to cancel a urban planning certificate, issued for the purpose requested by a separate legal subject, in order to build, the administrative litigation court will reject as inadmissible the request of the third party regarding the cancellation of the town planning certificate, considering the following arguments:

The administrative act, according to the provisions of art. 2 para. 1 lit. c) from Law no. 554/2004 on administrative litigation, with subsequent amendments and additions, is the unilateral act of an individual or normative nature issued by a public authority, under a regime of public power, in order to organize the execution of the law or the concrete execution of the law, which gives rise to, modify or extinguish legal relationships.

However, the urban planning certificate has the significance of a prior administrative operation, through which the applicant is informed by the competent authorities of the legal conditions that he must fulfill in order to obtain the building permit, by referring to the provisions of art. 6 of Law no. 50/1991 regarding the authorization of the execution of construction works, republished, with subsequent amendments and additions. In this sense, the urban planning certificate is only an information act, through which the public authorities bring to the attention of the applicant the information regarding the legal, economic and technical regime of the land and constructions, being necessary for the issuance of the building permit, but without giving the holder the right to carry out construction works.

The person injured in a right recognized by law or in a legitimate interest by a unilateral administrative act, dissatisfied with the response received to the prior complaint or who did not receive any response to the prior complaint within the term provided for in art. 2 paragraph (1) letter h), can notify the competent administrative court, to request the annulment of the act in whole or in part, the

reparation of the damage caused and, possibly, reparations for moral damages. It is also possible to address the administrative litigation court and the one who considers himself injured in a right or his legitimate interest by the failure to resolve within the term or by the unjustified refusal to resolve a request, as well as by the refusal to carry out a certain administrative operation necessary for the exercise or protection of the right or legitimate interest, according to the provisions of art. 8 paragraph (1) from Law no. 554/2004 on administrative and fiscal litigation, with subsequent amendments and additions.

The administrative and fiscal litigation court, appointed to resolve the request made under the conditions of article 8 paragraph (1), is materially competent to annul, in whole or in part, an administrative act, to oblige the public authority to issue an administrative act, to issue another document or to carry out a certain administrative operation or to rule on the legality of administrative operations which were the basis for issuing the act subject to judgment, in accordance with the provisions of art. 18 paragraph 1 and 2 of Law no. 554/2004.

However, according to Civil Decision no. 27/06.11.2017 of the High Court of Cassation and Justice, Fully competent to judge the appeal in the interest of the law, published in Official Gazette no. 194 of March 2, 2018, it was ruled that: "In the interpretation and application of art. 6 paragraph (1) and art. 7 paragraph (1) from Law no. 50/1991 regarding the authorization of the execution of construction works, republished, with subsequent amendments and additions, related to art. 2 paragraph (1) letter c) and art. 8 paragraph (1) from the Administrative Litigation Law no. 554/2004, with the subsequent amendments and additions, it is possible to exercise legality control, separately, on the urban planning certificate by which the prohibition to build was ordered or which contains other limitations".

As a result, the urban planning certificate that does not contain the prohibition to build or other limitations can be challenged only with the cancellation of the building authorization by the third party concerned under the conditions of art. 1 paragraph 2 of Law no. 554/2004 [12].

In this situation, we appreciate that the same solution regarding attacking the urban planning certificate together with the building permit is also required when the legality control is carried out by the People's Advocate or by the Public Ministry, in the situation where, following the exercise of the powers provided by law, it is appreciated that the violations of the rights, freedoms and legitimate interests of individuals are caused by the existence of individual unilateral administrative acts of public authorities issued with excess of power.

From the point of view of the term in which an urban planning certificate containing limitations or the prohibition to build can be challenged, thus becoming an assimilated individual administrative act, in accordance with the provisions of art. 11 paragraph 1 and paragraph 2 of Law no. 554/2004 on administrative litigation, with subsequent amendments and additions, applications requesting its cancellation, recognition of the claimed right and reparation of the damage caused can be submitted within 6 months from:

a) The date of communication of the response to the prior complaint.

b) The date of communication of the unjustified refusal to settle the request.

c) The date of expiry of the deadline for settling the preliminary complaint, respectively the date of expiry of the legal deadline for settling the request.

d) The expiry date of the 30-day period from the registration of the application provided for in art. 2 para. (1) Lit. h), calculated from the communication of the administrative act issued in the favorable settlement of the request or, as the case may be, of the prior complaint [13].

For valid reasons, in the case of the individual administrative act, the request can be submitted even after the deadline provided for in paragraph (1), but no later than one year from the date of communication of the act, the date of acknowledgment, the date of the introduction of the request or the date of the conclusion of the conciliation minutes, as the case may be.

Thus, in the situation where a person injured by an administrative act who addressed the issuing authority with a prior complaint in order to revoke the act under the terms of art. 7 of Law no. 554/2004 regarding the administrative litigation, with subsequent amendments and additions and received a response, has the possibility of introducing an action to cancel the act at the litigation court within the 6-month limitation period, provided by art. 11 paragraph 1 of Law no. 554/2004, which is calculated from the date of communication of the response to the prior complaint.

It is very important to distinguish between the limitation periods provided by art. 11 paragraph 1 of Law no. 554/2004 regarding administrative litigation, with subsequent amendments and additions and the one-year statute of limitations provided for by art. 11 paragraph 2 of the same normative act, which is calculated starting from the date of communication of the act, the date of taking cognizance or the date of the introduction of the request, depending on the object of the action or its owner.

In this sense, we specify that the phrase "*date of taking notice*" provided by art. 11 paragraph 2 of Law no. 554/2004 refers to the moment from which the statute of limitations begins to run for actions filed by injured third parties through administrative acts addressed to other legal subjects, similarly to establishing the date

from which the period for exercising the preliminary procedure runs, in correlation with considerations of the Constitutional Court Decision no. 797/2007 regarding the exception of unconstitutionality of the provisions of art. 7 para. (3) And (7) and the content of art. 7 para. 3 of Law no. 554/2004, the term is calculated from the date on which the applicant became aware of the existence and content of the urban planning certificate [14].

Conclusion

The urban planning certificate is a genuine document of information regarding the legal, economic and technical regime of the building and the urban planning requirements specific to the site, determined in accordance with the provisions of the urban planning documents endorsed and approved by the public authorities. It can be canceled by the competent administrative court, either with the request for the cancellation of the construction permit, at the request of the injured person, under the terms of Law no. 554/2004 on administrative litigation, with subsequent amendments and additions, distinguished from the beneficiary of the act, or by the applicant owner of the urban planning certificate, only in the situation where the requested act contains prohibitions or limitations regarding the right to build, thus acquiring the nature of an act assimilated individual administrative.

References

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2. Law no. 350/2001 on territorial planning and urban planning, article 2.
3. Law no. 350/2001 on territorial planning and urban planning, article 11.
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5. Law no. 350/2001 on territorial planning and urban planning, article 49 paragraph 3.
6. Decision no. 12 of June 28, 2021 pronounced by the High Court of Cassation and Justice - The panel competent to judge the appeal in the interest of the law, pronounced in the Official Gazette Part I no. 933 of 30/09/2021.
7. Order no. 233/2016 issued by the Ministry of Regional Development and Public Administration regarding the approval of the Methodological Norms of February 26, 2016 for the application of Law no. 350/2001 on territorial planning and urban planning and on the development and updating of urban planning documentation, article 18.
8. Law no. 50/1991 Regarding the authorization of construction works, republished, article 2^1.
9. Law no. 50/1991 regarding the authorization of construction works, republished, article 6 paragraph (1).
10. Law no. 50/1991 regarding the authorization of construction works, republished, article 6 paragraph 3.
11. Law no. 50/1991 regarding the authorization of construction works, republished, article 6 paragraph 4.
12. Civil Decision no. 27/06.11.2017 of the High Court of Cassation and Justice, the Panel competent to judge the appeal in the interest of the law, published in the Official Gazette no. 194 of March 2, 2018.
13. Law no. 554/2004 on administrative litigation, with subsequent amendments and additions, article 11 para. 1,2.
14. The civil sentence dated 03.12.2021 pronounced by the Brașov Court, Civil Section II, Administrative and Fiscal Litigation.