

UPDATES BROUGHT BY THE NEW LAW REGARDING THE REGULATION AND MANAGEMENT OF GREEN SPACES IN BUILT-UP AREAS

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Abstract

Law no. 47 of 19 March 2012 amending and supplementing Law no. 24/2007 regarding the regulation and management of green spaces in built-up areas, published in Official Journal no. 185 of 22 March 2012, aims mainly to introduce new categories of land among the green fields, such as nurseries and greenhouses, ensuring a minimum of 20 square meters of green space per inhabitant, prohibiting the change of destination, the reduction of surface or relocation of green areas and increases the amount of fines and their calculation on square meter of affected green areas. The legal obligations related to the protection and conservation of green areas has widened also for legal entities, which prior to these changes were not a subject to the fundamental regulation and obligations, "expressis verbis", such as the obligation not to charge with construction, not to cut in an unauthorized way, or not to throw any waste on green territories. By including the nurseries and greenhouses in the category of green spaces, the lawmaker hopes to stop the real-estate hunt and housing facilities, for the benefits of a healthy green environment, and not of an environment "made of concrete".

Keywords: green spaces, minimum of green space per capita, obligations to protect and preserve green spaces

INTRODUCTION

In the World Conference on the environment in Stockholm, June 5 to 16, 1972, organized by the U.N., the compulsory relation between man, namely the human rights and environmental protection was announced and recognized in principle no. 1: "man has a fundamental right to freedom, equality and satisfactory living conditions in an environment where quality allows him to live in dignity and prosperity" and a "solemn obligation to protect and improve the environment for present and future generations".

With the Treaty of Rome, the Single European Act as of 1986, the environmental protection is subject to Title VII, article 130 R, S, T of the

Treaty and the article 130R sets out the objectives of Community environmental policy, namely preserving, protecting and improving the environmental quality.

"The Maastricht Treaty as of February 7, 1992 marks a new stage in the recognition of environmental problems in the primary Community law"[1] the legal framework strengthened by the Treaty of Amsterdam as of October 2, 1997, which also uses the notion of "sustainable development", stating that the development of economic activities must be harmonious, balanced but also sustainable. In this respect, we understand that the sustainable development has the function of link between the environment and the economic objectives adapted to a high level of protection and

improvement of environmental quality according to article 2 of the Treaty.

The international law has developed the concepts of environmental protection, unfortunately, most of the times, many of them answering to the "concepts and principles often related to the search for new international economic orders, focused on development"[2]. The International Court of Justice has considered that the environment is not an abstraction, but "the space where human beings live and which the quality of their lives and health, including the future generations, depend on", a mediator between nature and quality of life [3].

The often used term of sustainable development was established in 1987, in the Brundtland Report of the U.N. World Commission on Environment and Development, named "Our common future", then once with the Declaration of Rio de Janeiro in June 14, 1992, which proclaimed the need to facilitate a development to meet the "needs of the present without compromising the ability of future generations to meet their own needs". In the Community Law, the concept was first regulated by the Treaty of Amsterdam as of October 2, 1997, in paragraph 7.

MATERIAL AND METHOD

The researches were performed using specific methods of the international environmental law and the urban planning law, using comparative analysis, relation to the EU legislation and national legislation of the EU countries. Also, has used specialized research and consulting bibliography, available in the libraries and journals in the field, in relation to the European Treaties and European Directive, which has as objectives the Community environmental policy, namely preserving, protecting and improving the environmental quality. The study was focused on the degree of harmonization of European and national standards, also on the legal effects they are producing.

We followed the interaction between law and related fields of green spaces matter, by statistical analysis of existing green space available per capita in Europe.

RESULTS AND DISCUSSIONS

The criticism for the sustainable development aims at either the incompatibility of the concept of economic development primarily focused on achieving revenue and consumerism with the notion of "sustainable", or the incompatibility of renewable resources with the exploitation of forests, fish and soil, so that the concept of sustainable development remains "an incantatory than programmatic scope"[4] either for the non-reconciliation of development concerns with the environmental protection seen as disinterested protection of species, wildlife, biodiversity with the subordination of the environment to the economic and commercial policies[5]. Thus, the political and ideological implications of the new era of understanding the environment in relation to the present development of mankind are undeniable.

The Green Policy was regarded as being actually the policy closely related to the development of modern cities [6]. Starting with the Green Charter of Berlin in 1874 of the Countess Dohna Poninski, up to the Charter of Athens, the idea of free green spaces - material of urbanism which contributes to human health, has always accompanied the largest urban boulevards. However, with the air pollution, after the World War II, the green spaces have been given new ecological functions, namely biological balance, physical and mental balance of people, physical balance of living organisms and aesthetic, social or cultural functions [7]. At European level, the town planning aimed at developing the green spaces to improve the environmental quality. Thus, the development of green spaces is a major and indispensable chapter in the evolution of urban and rural development, both globally and nationally for Romania, being treated as a long-term national strategy for improving the environmental quality in populated areas.

In the last year's Romania, by adopting and implementing the European strategies on the Community environmental policies, the national efforts were intensified both administratively and economically [8] and socially regarding the programming, design and green spaces development activities in

cities, both as new sites and rehabilitation and expansion of the existing ones.

I. Law no.47 as of March 19, 2012 for amending and supplementing the Law no.24/2007 on the regulation and management of green spaces inside the built-up areas, published in the Official Gazette no. 185 as of March 22, 2012 fought against pollution which has reached highest alarming rates in urban areas, either due to strong industrialization, or due to traffic, etc. to improve the environment. According to the substantiation note, it is estimated that one of the measures, which can change this situation, is the development of green spaces in urban areas, leading to the compliance with the Directive 2008/50/EC on the ambient air quality, limiting the exposure of citizens to micro-particles known as PM10[9]. The amendments focus primarily on the following issues:

1. Introduction of new categories of land among the green spaces, namely nursery gardens and greenhouses and ensuring a minimum of 20 square meters of green space per capita.

We consider by these new categories of land that it has been mainly aimed to enhance the green spaces in order to meet, for the immediate future, by the local governments, the obligation to provide out of the built-up area a surface of green space more than 26 m²/inhabitant, until December 31, 2013, the minimum value accepted in the European Union standards, although the World Health Organization recommends a green area of more than 52 m²per capita.

European capitals, such as Stockholm and London, have now surfaces of 83 and 64 square meters / capita while in 2007 Bucharest had an area of only 9.08 square meters / capita and, according to the data from the National Environmental Protection Agency, in 2008 it increased to 12.39 square meters / capita [10].

However, by the inclusion in the category of green spaces of nursery gardens and greenhouses, we hope to stop the real estate hunting for the benefit of a healthy green environment and not a concrete environment.

According to French law, in case of cities with a population of at least 20,000 inhabitants, we should find a public green space of at least 500

meters from the inhabitant's home, and the landscaped areas should be at least 1000 square meters. Of the category of public green spaces, the French law provides: neighbourhood squares and spaces, recreation spaces for children, at a distance of 300-500 meters of housing, green spaces such as parks, specialized facilities such as stadiums and sports fields, botanical or zoological gardens, peripheral public green spaces, such as forests, at least 100 ha or private green spaces such as gardens in hospitals, high schools or other public services and family gardens.

Furthermore, article R. 118-7 of the French Code of Planning provides the possibility of authorities issuing building permit to request the development of a green space for play and recreation located close to the construction.

2. Prohibition of use change, reduction of areas or relocation of green spaces. Such modification is an actual statement of the previous regulation in the use change, which is sometimes interpreted as being applied only to the premises with official inventory and not for all categories of land classified as "green spaces" by Law no.24/2007.

However, the extension of the built-up area of cities shall be achieved only under the planning documents which are to provide a minimum of 5% public green spaces and a minimum of 20m² green spaces per capita. These rules are applicable for the transformation of areas with other functions in residential areas and the building on lands with a surface more than 3,000m² which are private property.

The Bucharest Court of Appeal, Section VIII Contentious Administrative and Fiscal Matters, decided in October 2011 in the files no. 48436/3/2010 and no. 20095/3/2010 that the "lands developed as green spaces, although not listed as such in the planning documentation, are subject to the interdiction of being built on and changing their destination, according to article 71 of the Government Emergency Ordinance no. 195/2005 on the environmental protection, as amended and supplemented. In this respect the cancellation requests for two planning certificates issued by the Mayor of 1st District of Bucharest were rejected regarding two areas

of the Aviatiei neighbourhood, developed as green spaces between the blocks, but being privately owned. These planning certificates included the note that land is not constructible, although in terms of classification in the planning documentation they were placed in a built-up area" [11].

3. Increasing the fines and their calculation in square meters of affected green space.

Also, in parallel with fines, the measures to return the land to the condition before its occupation with constructions, at the expense of its owners, can also be applied.

4. Extending the legal framework of obligations related to the protection and conservation of green spaces for legal entities, who previous to these changes were not subject to the *expressis verbis* fundamental regulations, such as the obligation of not occupying it with constructions, not cutting without authorization, or not throwing any waste in the green space. The previous obligations for legal entities and individuals were quite elusive and with reference to the areas considered as green spaces, not to all lands in the legal category of green spaces.

II. General characteristics of green spaces.

In literature the green spaces are defined as those areas of land developed in terms of landscape, covered with vegetation and usually referring to parks, public gardens, squares, golf courses, private gardens, botanical gardens, etc. [12].

These areas of land may be made available for both the public use and selectively only for certain types of users, in case of private green spaces, within which one can access only with the consent of the owner.

The public green spaces are built on the principle of their multifunctionality and use diversely for recreational activities, which all citizens present in a certain area can benefit of, residents or visitors in those areas and their use must be open to all persons who wish to enjoy a pleasant environment [13].

Until the mid 20th century, the green spaces showed a predominant aesthetic role, currently earning an important social role "in pursuit of a better moral and physical health" of the citizen, becoming the "city's lung" [14], and an educational and cultural role, by providing

opportunities for meeting, communicating and socializing, space for entertainment, artistic events, play and safety.

The need for the protection of green spaces and the extension of their framework envisage, first, the pressure of urbanization, congestion, disordered construction and finally the profit from real estate. It was estimated that the green spaces perform multiple functions such as production (forests, agriculture), natural and human resource preservation, rest, leisure and oxygen to the public[15]. The green spaces, if constructed in the dominant wind axis, can create the ventilation alleys, with micro-climate action. The atmospheric action, which depends on the function of oxygen, is the possibility of having a filter effect of the polluted atmosphere. Studies in Belgium have shown that the complete purification of polluted air of 0.100 mg of SO₂ per cubic meter has been obtained, after passing through a hectare of forest, with a wind speed of 25 kilometres per hour [16].

Also, the benefit of green spaces consists of their earth and hydrological action by water filtration. The EC Directive no. 2000/60 as of October 23, 2000 regarding the establishment of a framework for a Community policy in the water domain establishes the water heritage conception presented in the first point of the head note: "Water is not a market product like the others, but a heritage to be protected, defended and treated as such". By the United Nations General Assembly resolution in July 2010 the right to drinking water and sanitation is proclaimed as a fundamental right, essential to full enjoyment of life and exercise of all human rights.

According to a study conducted in 2009 by Fuller and Gaston [17], in 2001 in the urban localities of the European Union there were about 170.6 million people, almost 34% of the Union population and the average area of green space amounted to 18.6% of the urban area. According to the study, worldwide over 50% of the population is grouped in urban areas.

According to the specifications issued by Fuller and Gaston, in Fig. 1, the points, representing cities, are coloured according to the percentage of green space coverage. The

country polygons are coloured according to the provision of green space (m^2) in urban areas, per capita. Countries whose data were not available are coloured in grey.

Nationally, according to the 2009 Statistical Yearbook of Romania[18], in 2008, there were approximately 9.73 m^2 of green space available per capita in localities and the total surface of public green space amounted to 21,124 hectares, with a territorial distribution shown in Fig. 2.

Through the national programs over the last five years, the development of the national green space network infrastructure in cities is encouraged selectively, both quantitatively and qualitatively, being particularly favoured those investments consisting in the creation of new spaces and extensions and then the development of the existing green spaces. In this regard, it aims at increasing the area of

green space per capita in the built-up areas and the national target is to exceed 26 m^2 of green space per capita until December 31, 2013.

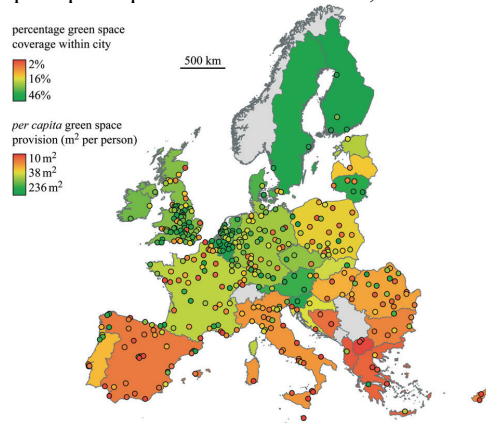


Fig. 1. Coverage of green spaces in urban area in Europe (according to Fuller and Gaston, 2009)

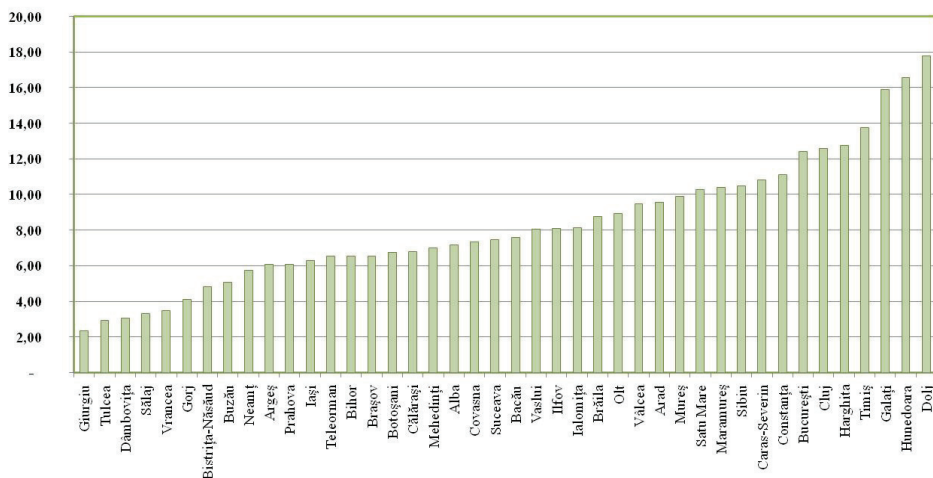


Fig. 2. Availability of green space (m^2 / capita) in the counties of Romania (according to INS)

CONCLUSIONS

Unlike in other European countries, our average area of green space per capita is reduced, far below European standards. The updates brought by the new law no. 47 of 19 March 2012, regarding the regulation and management of green spaces in built-up areas, aims mainly solve the issue through the introduction of new categories of land among the green fields. The prohibition to build and change the destination, propose protecting and

guaranteeing the right to a healthy environment, provided by art. 35 of the Constitution so that the limitation of property right is justified by environmental protection, and therefore the existing green space, with a direct link with the public health, "which represents a value of national interest" [19]. It is advisable to perform and standardize national urban planning documentation, being known the discrepancy or even nonexistent the local authorities registers concerning the green spaces with the real situation on the ground, so

that no conflicts exist over the built or unbuilt area framing, existing between records of urban planning certificates and the classification from the urban planning documentation. Would be recommended also to be establishment an implementation system ho verify and monitoring the compliance with legal requirements, more efficiently and periodically, as well as solving the management problems of these areas, and the low degree of accessibility to urban services. The future urban planning project should include the development of green space area, by regulating the minimum distance between residential areas and green space area. The development of green spaces must be built on the principle of sustainable and environmentally friendly design of landscape development using the available resources responsibly, with the purpose of improving the surrounding area [20].

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