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# Evolution of Law in Urbanism and Constructions Authorization

The legal provisions applicable in Urbanism and Constructions Authorization domain over the last 25 years have been subject to evolution, indicating an incremental understanding of the policy makers on the legal elements that must be regulated in order to balance the rights and legitimate interests of the actors involved in this field (i.e., public authorities and private beneficiaries).

Such evolution has been manifested either in (i) better understanding of legal institutions available for certain domains, which resulted into renouncing to some restrictions (e.g., *interdiction to issue a building permit if the land title is subject to litigation*), (ii) clarification of some legal terms used without the necessary details for proper understanding (e.g., *start of an investment*) or (iii) elimination of some legal provisions which created unwanted effects in practice (e.g., *validity period of the urbanism documentations*).

## Obtaining the building permit when the land title is under litigation

The initial form of the Law no. 50/1991 regarding the constructions' authorization provided that the building permit cannot be issued if the land title of the beneficiary is under litigation.

This approach tried to avoid situations when building permits were issued to beneficiaries that were not the actual owners of the land and have their ownership title already challenged in court. Nevertheless, such cautious provision was also regarded as a restriction of the ownership attributes of the building permit beneficiary, who was still duly registered as unencumbered owner of the land and the simple challenge of his ownership title should have not been considered as lack of title. Consequently, the law was changed in 2004, such interdiction was eliminated, and it was even provided that the issuer of the building permit is not liable for any damages caused to a claimant against the building permit beneficiary (if the litigation is not registered with the land book). Such provision is meant to protect the public authority in case the litigation is won by the claimant, and the land title of the beneficiary is cancelled.

## Continuing projects when the validity period of the urbanism documentation expired

The Law no. 350/2001 regarding the urbanism provided that the validity of the provisions included in the urbanism documentations is automatically extended for the investments started within the validity period of such urbanism documentations.

The legal provision was beneficial, and it was sufficiently clear with respect to the intention of the law to maintain the applicability of the urbanism documentations for the investments already started, but the law contained no provision to indicate the meaning of the "investment starting".

It was only in 2016 that "investment starting" was clarified, being indicated that the investment is considered as initiated when the building permit procedure was started by filing the application of the urbanism certificate. Such clarification was merely an acknowledgement of the legal interpretation constantly issued by the practitioners in multiple projects, which managed to convince the public authorities on the meaning of the respective legal term of "investment starting", but now the applicability of the validity extension rule of the provisions of urbanism documentations is official and clear.

## Validity period of the urbanism documentations

The Law no. 350/2001 currently provides that the validity period of the urbanism documentation is established by the public authority approving the respective documentation.

This legal provision was construed by the public authorities as an obligation, and they have applied it as practice by establishing a fix validity period for each urbanism documentation.

The usual validity period is established for the zoning urbanism plans (PUZ) to five years, and for the detailed urbanism plans (PUD) to two or three years.

This interpretation triggered a truly yo-yo effect on the urbanistic regime of the localities or certain areas, having the technical parameters applicable for the land plots (e.g., maximum height, land occupancy rate, land use coefficient) fluctuating from time to time without any legal or opportunity reason



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than the simple expiry of some urbanism documentations.

Thus, the parameters approved by a PUZ beyond the limits of the general urbanism plan (PUG) will be applied for only five years, and they shall return to the original limits provided by the PUG at the expiry of the PUZ. Later, such parameters will be changed again (for only five years) by a new PUZ, just to return to their original limits provided in the PUG, when such new PUZ expires.

Similarly, the parameters approved by PUD will apply for only 2-3 years and will return to the limits provided under the PUZ or PUG, when the PUD expires.

This practice is detrimental to the stability and predictability of any urbanism policy and should be changed. In this respect, we have noticed that the project of the long-time expected Code of the Land Administration, Urbanism and Constructions ("Urbanism Code") properly addresses this issue, providing a new rule with respect to the validity period of the urbanism documentations.

According to this newly proposed rule, there will no longer be established a limited validity period for the urbanism documentations. Such documentations shall be valid until the approval of a new urbanism documentation of equal or superior rank, which will modify the existing documentation.

We cannot be sure at this time that the above-mentioned provisions will be maintained into the final form of the Urbanism Code, but we notice that the problem which we have identified is known to the public authorities and they try to sort it out in a proper manner. We can only hope that this issue will also be resolved soon, and it will only be listed as one of the issues which have been corrected in time, by the evolution of law.