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## DETAILED URBAN PLAN – BETWEEN SPECIFIC REGULATION AND UNCERTAIN LEGAL NATURE

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### **Abstract**

*Spatial planning and town planning are regulated in the provisions of Law no. 350/2001 and have as their basic purpose the establishment at a centralized level of a unitary framework for the development and planning of all construction, reconstruction and restructuring works.*

*The detailed urban plan is a frequently encountered urban design tool in the field of territorial planning, and obtaining it is required in some situations precisely to respect the need for public safety and security, being a concrete application of the elements of the local urban planning regulation.*

*Although it is classified as a specific regulation, the detailed urban plan does not enjoy a coherent and predictable legal framework, the proof of this fact being the extensive jurisprudential discussions regarding the legal nature of this administrative act, and the objective of this paper is to analyze the legal incidents and national jurisprudence provisions to answer the question of whether the determination of the legal nature of the detailed urban plan can affect the imperative of public safety and security of legal relations.*

**Key words:** *detailed urban plan, Law no. 350/2001, individual administrative act, normative administrative act, national jurisprudence, town planning.*

### INTRODUCTION

The matter of urban planning, the main component of the activity of local public administrations, enjoys extensive regulation and practical application, its purpose being described by the legislator itself, respectively, "*stimulating the complex evolution of localities, through the elaboration and implementation of*

*spatial development strategies, sustainable and integrated, in the short, medium and long term".*

Looking at things from the perspective of legal subjects, urban regulations become relevant with the start of a real estate project, respectively in the procedure of obtaining a building permit regulated by Law no. 51/1991 republished, a situation in which, depending on the particular aspects proposed and pursued by the beneficiary regarding the investment, as well as the manner in which these particular aspects comply or not with the general urban plan of the city, respectively the inclusion of the respective plot in the PUG norms- ul so that it is possible to directly issue the building permit, it becomes imperative to obtain an urban documentation called a detailed urban plan (DUP), which regulates the concrete situation of the plot by referring to all the rules applicable in the respective area.

## **I. LEGAL FRAMEWORK**

Territorial planning and urban planning documents are regulated and defined in Law no. 350/2001, and according to art. 39 para. (1) of this normative act, *"territorial development and urban planning documentation means the territorial development plans, urban planning plans and the general urban planning regulation, approved and approved according to the law."*

In the same sense, the provisions of art. 44 and 45 of Law 350/2001 clarifies the need for the existence of urban planning documents, the broad perspective of the urban planning process related to the imperative of sustainable development of localities, classifying, at the same time, these urban planning documents in the general urban plan (hereinafter PUG), the zonal urban plan (hereinafter ZUP), respectively the detailed urban plan (hereinafter DUP).

For this analysis, it is particularly relevant to remember the provisions of art. 4 of the same normative act, legal provisions that give the urban planning activity a normative character, by detailing all the aspects related to the exploitation of land and the specifics of buildings, but also of infrastructure, landscaping and plantations.

The systemic analysis of the legal provisions mentioned above leads to the conclusion that all urban planning documents establish rules applicable erga omnes regarding the exploitation of immovable land, each individual document presupposing a regulation applicable at a different level.

In this sense, at the first level there is the PUG, then the ZUP, and finally the DUP, the existence of the first two documents conditioning the development and approval of the DUP, all of which are approved by the decision of the central or local deliberative body, as the case may be, and puts in application by the executive authority, respectively the mayor's institution.

Regarding the detailed urban plan, art. 48 of the same normative act provides that, *"(1) The detailed urban plan has the character of specific*

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*regulation for a parcel in relation to the neighboring parcels. The detailed urban plan cannot modify the higher level plans. (2) The detailed urban plan is the urban design tool that details at least: a) the specific way of building in relation to the functioning of the area and its architectural identity, based on a specialized study; b) withdrawals from the lateral and rear limits of the plot; c) the percentage of land occupation and the manner of land occupation; d) car and pedestrian accesses; e) architectural-volumetric compliance; f) compliance of public spaces. (3) The detailed urban plan is drawn up only for the detailed regulation of the provisions established by the general urban plan or the zonal urban plan”, in the same sense being the provisions of art. 19 of the Methodological Norms for the application of Law no. 350/2001.*

### II. THE LEGAL NATURE OF THE DETAILED URBAN PLAN

The doctrine and practice of the courts has faced a problem in recent years, namely that of establishing the legal nature of this urban documentation, starting primarily from the legal regulation exposed above, by referring to the doctrinal classification of administrative acts.

While the relevant doctrine in the matter was unanimous in the sense that the detailed urban plan, along with all other urban documentation, represent genuine normative administrative acts (Ovidiu Podaru, 2020), the practice of the courts highlighted two equally well-defined opinions, the first opinion being in agreement with the doctrinal one, (Civil Settlement of 21.04.2023 of the Cluj Court, Mixed Section for Administrative and Fiscal Litigation, Labor Disputes and Social Insurance), and the second opinion being in the sense that the decision of the local Council regarding the approval DUP represents an individual unilateral administrative act (Civil Decision no. 625/2023 dated 03.05.2023 of the Cluj Court of Appeal, Section III Administrative and Fiscal Litigation).

This qualification presented, until recently, significant theoretical and practical consequences, both from the perspective of the limitation period of the action directed against the legal act, as well as regarding the period for completing the preliminary procedure.

Starting the analysis of the theme from the classification mentioned above, we note the fact that in the post-war doctrine it was appreciated that this classification into normative and individual administrative law acts starts from the different legal effect produced by the manifestations of will of the state administration bodies (Tudor Draganu, 1959, p. 85-87), while the post-communist doctrine mentioned that according to the extent of the legal effects, normative acts, individual acts and acts of an internal character are distinguished (Antonie Iorgovan, 2005, p. 39).

In the same sense, the French doctrine nuanced this distinction in the sense that the normative act creates a general and impersonal situation, while the individual act gives rise to a particular legal reality, the normative act proposing

norms of a general nature and without taking into account its addressees, and the individual act being thought only in relation to its recipient (Gaston Jèze, 1913, p. 9-17).

The more recent doctrine emphasized the fact that administrative acts are distinguished by the degree of determination of the addressees of the enacted norms, the normative act addressing an undetermined sphere of addressees, while the individual act targets a determined group of addressees (Ovidiu Podaru, 2010, p. 61).

Looking at things from a pragmatic perspective, the opinion was also expressed that an individual act represents a unilateral externalization of will having as its output the birth, modification or termination of legal relations with a determined recipient, and by exclusion, all administrative acts that do not fall under in this pattern are normative acts (Bogdan Dima, 2021, p. 29).

Returning to the matter under discussion, from the overall analysis of the provisions of Law no. 350/2001, it can be clearly observed the legislator's intention to give a normative character to these regulations, territorial development strategies and the rest of the activities exposed above, being acts issued in the organization of the execution of the law, being regulated as normative acts, according to the provisions of art. 14 of the Law.

The High Court of Cassation and Justice was recently referred to bring an important ruling in this debate, holding, by Decision no. 12/2021 pronounced by the RIL Panel (regarding the legal nature of the ZUP that: *"in the process of classifying an administrative act in one of the two categories (...), essential are the legal effects it produces, the nature of the measures ordered, and not the form or name; administrative acts of a normative nature contain provisions of a general nature, having applicability in an undefined number of situations, so they produce legal effects erga omnes against an undefined number of persons, while administrative acts of an individual character aim to achieve legal relations in a strictly determined situation and produce effects either against a single person or against a determined or determinable number of persons"*).

Even if the High Court did not rule on the legal nature of the urban planning documentation analyzed in this work, in the considerations of the mentioned decision it stated, starting from the doctrinal distinctions and the legal provisions set out above, some criteria that can be extrapolated also in what as regards the DUP, respectively the definition provided by the legislator to the urban planning documentation, the specific normative regulation, as well as the possibility of identifying the addressees of the norm, the essential aspect of the applicability of the normative administrative act from a temporal point of view with regard to any subject of law introduced in a legal report based on the town planning regulations of the area in question.

If, in the case of the General Urban Planning Plan, the normative legal nature can be easily deduced from the legal provisions *supra* mentioned, and as

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regards the ZUP, the same conclusion was drawn by RIL Decision no. 12/2021 of the HCCJ, regarding the DUP, things were not so clear for legal practitioners, the two opinions set out above being expressed, with all the corresponding consequences that arose from these interpretations.

### III. COURT PRACTICE

The first jurisprudential orientation that was formed in terms of the qualification of the DUP as an individual administrative act started from the considerations set forth in Decision no. 1718/2013 pronounced by the HCCJ Administrative and Fiscal Litigation Section in which the distinction between the two categories of administrative acts was emphasized from the perspective of the extent of the legal effects and the recipients of the decreed rules but also from the considerations of the RIL Decision no. 12/2021 mentioned above, in which the supreme court nuanced the importance of the determinability of the legal subjects that can fall under the ZUP regulatory norm, a sphere that can expand and rebut not only on the people who had the right of ownership over a building in their patrimony located in the area of applicability of the ZUP, but also on the owners of neighboring buildings (Civil judgment no. 1988/2022 of 15.07.2022 of the Cluj Court, Mixed Section for Administrative and Fiscal Litigation, labor conflicts and social insurance, (Civil Decision no. 625/2023 of 03.05.2023 of the Court of Appeal Cluj, Section III Administrative and Fiscal Litigation).

The courts that formulated this reasoning appreciated that by Decision no. 12/2021 of the ICCJ mentioned above, the delimitation between the two categories of administrative acts was nuanced, making a global assessment of their content, the legal effects produced, the general or determined applicability to a number of situations and to the specific recipients.

At the same time, it was appreciated that from the provisions of art. 32 and 48 of Law 350/2001 the form in force at the relevant date in the respective case, the year 2008, it unequivocally results that in the legislator's conception the detailed urban plan concerned concrete constructions, determined what was wanted to be done at a given moment on a or several adjacent plots through the use of one or more locations on these plots and for which the authorization process has begun by issuing the urban planning certificate. Therefore, unequivocally, the detailed urban plan could only be used in the process of authorizing a construction or certain constructions, and in the hypothesis that after the adoption of the DUP, the building permit was obtained for these determined objectives, and these were also actually carried out, the detailed urban plan exhausted its legal effects and could no longer produce any other legal effect, similar to a building permit. In other words, he could not establish urban regulations for any other construction that would have wanted to be carried out on the plots for which this detailed urban plan was adopted, and from this object of

regulation it unequivocally follows that the detailed urban plan it does not contain provisions with general applicability for an indefinite number of hypotheses and does not produce legal effects that are applicable to all legal subjects.

At the same time, another argument was that this administrative act approves the erection of a certain construction under certain conditions of location, dimensions, compliance by the person who was at that time the holder of a right over the plot/plots in question, which allowed him to build, and the detailed urban plan produced legal effects only for the realization of the respective construction/constructions by the person indicated above (and his successors), not for the realization of other constructions by other persons even on the plot/plots in question, resulting in the fact that it is not possible to claim, given the specific object of the detailed urban plan, that it establishes some rules of a general nature, which relate to the essence of regulation.

In support of this first jurisprudential orientation is also the Minutes of the Meeting of the presidents of the specialized sections of the High Court of Cassation and Justice and the courts of appeal dedicated to the unification of judicial practice in the field of administrative and fiscal litigation of May 5-6, 2022, during the meeting this opinion being embraced by the majority according to which, *"the decision by the local council approving the detailed urban plan has the legal nature of a unilateral administrative act with an individual character."*

The second jurisprudential orientation had in mind the qualification as a normative administrative act of the detailed urban plan, starting from the same classification of administrative acts and the same theoretical delimitations between the two categories, appreciating that the main difference between the two is not a quantitative one, namely the number of the persons concerned by the act, but a qualitative one, namely the determinability of the addressees, with the direct consequence of this distinction, i.e. normative acts do not create actual rights or obligations, but *"calls"* to certain rights or obligations, while individual acts embody one or more normative acts, attributing rights or obligations to certain persons (Civil Settlement of 21.04.2023 of the Cluj Court, Mixed Section for Administrative and Fiscal Litigation, Labor Disputes and Social Insurance, Civil Sentence no. 169/CA/2023 of 29.06.2023 of the Oradea Court of Appeal, Administrative and Fiscal Litigation Section).

In continuation of this legal reasoning, these courts appreciated that a person can be the addressee of a normative act to the extent and only as long as they meet the conditions provided by this act to be within its scope, but acquire a right or a concrete obligation exclusively when an individual administrative act is issued in their name, rights and obligations that can no longer be lost by the fact that the recipient simply leaves the scope of the act, referring to the provisions of art. 48 of Law no. 350/2001 and emphasizing that the very legal definition of the DUP specifies that it has a *"regulatory character"*, which leads to the conclusion

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that it has a normative character, as long as the idea of regulation is specific to this type of acts.

Also, it was stated that from the provisions cited above it appears that the DUP regulates the way of building on a certain plot, but it does not appear that it would regulate this way of building exclusively for the benefit of a specific recipient or recipients, on the contrary, although a certain natural person can be the initiator of this urban documentation, once it is adopted its regulations are valid for any person who would like to obtain a building permit on the respective plot, and the names of the natural persons registered in the act do not mean that they are its beneficiaries, but only simple initiators, or, a normative act can have initiators, the closest example to the analyzed situation being that of ZUP which, although it has initiators in its turn, is generally considered a normative administrative act.

In reality, the logic of the urban regulation carried out through administrative acts is that PUG as well as ZUP and DUP constitute administrative acts with a normative character, to be implemented by issuing the building permit, the only administrative act with a truly individual character, which establishes in favor of a determined beneficiary the right to build and the obligations that they must comply with.

A final argument in support of this guideline is that once a DUP is adopted, its regulations are valid for any person who would like to obtain a building permit on that plot, and its effects are not limited in time until the first building permit is issued, therefore in the event that the first building permit would become ineffective, being, for example, cancelled, the same DUP can be used to issue a new building permit.

In this context, we also mention the minority practice of some courts in the sense of not ruling on the legal nature of urban planning documentation in the cases where the issue of suspension of administrative acts and the exceptions of the lack of active procedural quality and interest was raised because, as it was shown previously, art. 1 paragraph 1 and para. 2 of Administrative litigation law allow contesting (and implicitly, the request for suspension of execution) including individual administrative acts addressed to another subject of law, if the plaintiff claims an injury, and on the other hand, art. 42 letter a) from the Methodology approved by MDRT Order no. 2701/2010 does not limit the scope of interested persons, but establishes a presumption of interest in favor of the owners of neighboring plots, which does not exclude the existence of an interest arising from an alleged injury that can be invoked by a person other than an owner of a neighboring plot. Moreover, art. 48 of Law on territorial planning and urban planning does not ignore the possible consequences of the detailed urban planning plan including on other plots than the neighboring ones, because the specific building conditions specified in the DUP are to be made taking into account the particularities of the area, respectively its architectural specifics.

These courts appreciated that regardless of the analysis, such as, in the case of an action aimed at canceling/suspending a zonal urban planning plan (normative administrative act, as established with binding value by ICCJ Decision no. 12/28.06.2021, given in the resolution of an appeal in the interest of the law) or a building permit (individual administrative act), the plaintiff is not requested a certain quality arising from the possession or not of a property in the vicinity of the plot that is the subject of one of the two mentioned administrative acts, thus, even in the case of a request to suspend the execution of a HCL approving a detailed urban planning plan, the scope of the plaintiffs cannot be limited to the owners of the neighboring plots (Decision no. 207/R of 04.05.2023 of the Court of Appeal Târgu Mureș, Section II Civil, Administrative and Fiscal Litigation).

#### **IV. APPLICATION OF THEORETICAL CRITERIA TO THE SUBJECT ANALYZED**

It goes without saying that all the above analysis would not find its place in the hypothesis in which the mentioned legal texts would be clear in expressing the legal nature of all urban documents, including the detailed urban plan, but in the absence of such clarifications, we can only interpret the supposed will of the legislator.

In our opinion, from the corroboration of all the provisions mentioned above, it emerges that the detailed urban plan is also an act of normative regulation, together with the ZUP and the PUG, all these documents constituting a unitary ensemble in the urban regulation, which subsumes the local and national development strategy, having in common the fact that they are issued by the deliberative authority of a territorial administrative unit, respectively the local council and do not refer to a person or a group of persons, determined or determinable, but to a certain territory.

In analyzing the contrary opinion, it is observed that a main confusion starts from the regulatory character of the detailed documentation, since it would not establish general rules, but concrete ones for a certain plot, without having the ability to be applied to an indeterminable sphere of beneficiaries. In this context, it should be remembered that the obligations established by the detailed urban plan are *propter rem* obligations, so that in the case of the transmission of the property right or other real right over the building, the acquirer will be obliged to comply with them in the case of the completion of a construction. From this point of view, the following argument cited in support of the first opinion, namely the determinability of the beneficiary, can also be invalidated, as long as, apparently, starting from the parcel regulated by the DUP, its owner can be identified, in concrete terms, this beneficiary can change easily without affecting the validity or binding effect of those established in its contents. Also, the notion of "*beneficiary*" is improperly used for the same reasons, being rather about an initiator who at a certain moment has the interest to request this detailed documentation from the public authority.



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For all these arguments, we appreciate that all considerations of Decision no. 12/2021 issued by the High Court of Cassation and Justice applies, *mutatis mutandis*, also with regard to the DUP, the two documents not being different from a legal perspective.

As we stated at the beginning of the paper, the consequences of the correct qualification of the legal nature of this administrative act subject to analysis were, until the entry into force of Law no. 151/2019, significant both from the perspective of the limitation period and the period regarding the formulation of the preliminary procedure in order to challenge in administrative litigation the decision approving the documentation.

Thus, regarding the action in administrative litigation exercised against normative acts, art. 7 para. (1<sup>1</sup>) and art. 11 para. 4 of Law no. 554/2004 provide that a preliminary complaint can be filed at any time, while in the case of individual documents, the filing of the complaint is subject to a period of 30 days from the date of receipt.

Regarding the limitation period, however, the same legal provisions establish a limitation period of 6 months in the case of individual documents, calculated differently depending on the attitude of the administrative body towards the prior complaint, respectively the response received to the prior complaint or the lack of such answer, while in the case of normative acts, the legislator established the imprescriptibility of the action.

A last edifying argument in support of the interpretation that the legislator had in mind the qualification of all urban documentation as normative acts, was offered by amending art. 64 para. 3 of Law no. 350/2001, by Law no. 151/2019, the legislator establishing a general competence in favor of the administrative litigation courts for the resolution of all disputes generated or in connection with urban planning documents from the perspective of the competent courts, also establishing a general limitation period of 5 years for the exercise of the specific right of appeal against decisions approving urban documentation, therefore the practical importance of revealing the legal nature of the DUP has diminished at this moment.

However, another pertinent question is raised to which the legislator did not provide an answer at the time when it amended art. 64 of Law 350/2001, respectively if it correlates properly with the provisions of art. 64 para. 3 of Law 554/2004 regarding the preliminary procedure, in the absence of an answer within the law, the only logical answer would be that it can be formulated at any time within the 5-year term..

### CONCLUSION

*The detailed urban plan is a genuine normative administrative act with a significant importance in the matter of urban planning, the initiators striking the*

*necessity of obtaining it in the case of making investments in urban areas regulated in too general terms by the GUP OR ZUP.*

*The normative nature of this administrative act was confirmed by the legislator through Law no. 151/2019 amending Law 350/2001, by establishing this general limitation period of 5 years for all actions to annul the decisions approving land use and urban planning documentation, a genuine exception to the imprescriptibility of the actions exercised against normative acts, an exception established precisely to ensure the stability of legal relations.*

*All the regulations set out above attest to the fact that through the DUP(detailed urban plan) obligations are established for any land owner at a given time, the purpose of establishing these obligations is to ensure additional protection in the planning of the territory and neighborhood relations, and finally to ensure public safety, which is why it can be stated that the legal nature of this decision approving the DUP is, without a doubt, an administrative act with a normative character, with all the specific consequences arising from this qualification.*

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