

The odyssey of urban planning in Bucharest



1. Background

Bucharest is currently going down a rocky road insofar as urban regulations are concerned, which have gone through a real odyssey, from being judicially and administratively suspended, to some of them ending up by being finally cancelled by the administrative litigation courts. The symptoms of illegality have set in slowly but surely, starting with the chaotic development of constructions until such breaches were finally established by administrative authorities and courts of justice. The cancellation in first instance court a few months ago of the general urban plan ("PUG") of Bucharest caused a potentially major crack in the very foundation of urban regulations at the capital city level.

Pursuant to art. 10 of Law no. 350/2001 on land management and urban planning, *urban planning is mainly aiming at stimulating the complex evolution of localities through the development and implementation of spatial, sustainable and integrated development strategies, in the short, medium and long term*. Although the purpose established by the law is clear in principle, things end up by becoming increasingly confusing in the transition from principles to details and from theory to facts, while the urbanistic situation in Bucharest amply illustrates this.

At the same time, a metropolis such as Bucharest requires an enhanced coordination between the various administrative sub-divisions (sectors) and the various urban functionalities. That is why the so-called "*sector coordinating zonal urban plans*" (in Romanian: *planuri urbanistice zonale coordonatoare de sector*) have been adopted, despite the fact they lacked a distinct definition under the law. As such, they are, from a legal nature perspective, just ordinary zonal urban plans ("PUZ"). Unfortunately, rather chaotic or excessive and even illegal regulations have been introduced under these PUZs, contrary to their official goal of coordination.

2. Current Situation of Bucharest's PUG

The PUG of the Bucharest Municipality was adopted by Decision of the General Council of the Bucharest Municipality no. 269 of 21 December 2000, for a 10-year validity term. This PUG was then extended several times, finally being decided that it will remain in force until a new PUG is adopted. It is also notable that the PUG of the Bucharest Municipality has, throughout its existence, undergone numerous supplementations, amendments, but also partial cancellations in court¹. This should not be viewed as a surprise, as it only reflects the fact that the

realities of the 2000s no longer match the realities of the 2020s. The evolution of the urban framework is also reflected in the provisions of art. 46 para. (1) of Law no. 350/2001 which require territorial administrative units to update the PUG at a time interval that should not exceed 10 years. In the light of the provisions of art. 46 of Law no. 350/2001, it is obvious that in the case of Bucharest, the PUG, which in theory should have represented the city's urban planning management tool, has actually become an obsolete tool.

Moreover, due to recent events, the residents of Bucharest are now facing a problem that is even more serious than the applicability of an obsolete PUG, namely the potential disappearance / irrelevance of the PUG itself. We need to bear in mind that in May 2022, the Bucharest Court admitted in first instance a legal action seeking the cancellation of the capital city's PUG.² This leads to an uncertain outlook from at least two perspectives:

- (a) what will happen to the building permits issued under the PUG, if this will be definitively cancelled, and
- (b) what will happen to the building permits that will be applied for after the final cancellation of the PUG.

Regarding point (a) above, the rule *quod nullum est, nullum producit effectum* (that which is null produces no effect) could not always be considered as a guiding principle in this matter, since its application would produce, in practice, serious procedural problems³. This approach was implicitly adopted by the legislator under art. 23 of Administrative Litigation Law no. 554/2004 according to which the *final and irrevocable court rulings under which an administrative act of a normative nature is cancelled in whole or in part shall generally be binding and have power only for the future*.

In light of these arguments, the stability of the legal circuit does not seem to be threatened by a possible cancellation of the PUG, but the High Court of Cassation and Justice (the “**High Court**”) held under Ruling no. 10 of 11 May 2015, a preliminary ruling for the settlement of certain legal matters with a binding character (“**HCCJ Ruling 10/2015**” or the “**Ruling**”), that the *provisions of art. 23 of Law no. 550/2004 should be interpreted in the sense that the irrevocable/final court ruling under which an administrative act of a normative nature has been cancelled in whole or in part will also produce effects with respect to the individual administrative acts issued pursuant to it, which, as at the publication of the court ruling of cancellation, are appealed in cases pending before the courts*.

Therefore, we distinguish four possible situations insofar as the fate of building permits is concerned further to the cancellation of the PUG if we consider the High Court's interpretation embraced in HCCJ Ruling 10/2015, as reproduced above:

- (i) if the building permits were not appealed (before court) until the final cancellation of the PUG and the specific appeal term provided by law has expired, they can no longer be cancelled under an administrative litigation procedure on the ground of the PUG cancellation;
- (ii) if the building permits were not appealed (before court) until the final cancellation of the PUG and the specific appeal term provided by the law has not expired, the question that arises is whether they can be subsequently appealed on the ground of the PUG cancellation (of course, within the legal term of appeal).

According to the literal interpretation of the Ruling, the answer would appear to be "no", in the sense that any individual administrative acts whose cancellation was not subject to a pending lawsuit initiated before the cancellation of the normative administrative act can no longer be cancelled;

(iii) if the building permits were appealed (before court) prior to the final cancellation of the PUG, within the legal term provided by law for appealing them as individual administrative acts and the appeal is pending, they may be cancelled as an effect of the PUG cancellation;

(iv) if the building permits were appealed (before court) prior to the final cancellation of the PUG, after the expiry of the legal term provided by law for appealing them as individual administrative acts, and the appeal is pending, the question that arises is whether these permits may still be cancelled by virtue of the Ruling, which does not make a distinction between individual administrative acts whose legal term has expired or not, or, on the contrary, they remain valid as the specific appeal term has expired. In other words, would the interpretation given in the Ruling have the effect of a reinstatement of the appeal for challenging individual administrative acts or not? In our opinion, the most reasonable answer is "no", given that the Ruling was first and foremost based on procedural/technical arguments dealing with the effects in time of court judgments, and, anyway, a court (be it the High Court) may not operate a reinstatement of the appeal except in cases restrictively and expressly provided by the law.

More specifically, the High Court adopted in its ruling certain arguments from the relevant jurisprudence of appeal courts based on a procedural analogy between the cancellation of an administrative act and the admission of a plea of unconstitutionality: *"The courts held that the ruling cancelling the normative administrative act produces effects similar to the ruling issued by the Constitutional Court whereby a plea of unconstitutionality is admitted, and its effects are reflected on the cases that are pending at the publication of the ruling in Part I of the Official Gazette of Romania, an argument in this sense being the fact that the expression have power only for the future provided under art. 23 of Law no. 554/2004 can also be found in the content of art. 147 para. (4) of the Constitution."*

However, in order to cancel the individual administrative act, the court needs to be in a position to debate the issue on the merits. Or, where the legal term for appealing (before court) an individual administrative act has expired, the court may no longer debate and rule on the merits of the appeal for cancellation. We also believe that a contrary interpretation would threaten the legal certainty, leading to the potential cancellation of administrative acts carried out in practice to a significant extent, a situation that can be encountered especially when a third party appeals (before court) against an individual administrative act (*e.g.*, building permit) addressed to another person.⁴

Of course, the aspects mentioned at points (i) – (iv) above generally apply to any individual administrative acts issued under a cancelled normative administrative act.

Regarding point (b) above, in the event that the PUG is finally cancelled⁵, future building permits will be issued in compliance with the provisions of the Civil Code and Government Decision no. 525/1996 for the approval of the General Urban Planning Regulation. In the absence of the PUG, the normative acts of a general nature will be applied, in line with the provisions of art. 36 para. (2) of the General Urban Planning Regulation which set forth that until the approval of general urban plans and local urban planning regulations, the execution of construction works will be authorized only under the conditions laid down in the General Urban Planning Regulation.

This provision, initially a transitory one, can succeed with a minimum of success in overcoming the possible regulatory void triggered by the PUG's cancellation. Therefore, this could be favorable, to some extent, to those

who want to build, as they would no longer be compelled to comply with the more detailed or specific rules regulated in the PUG, but the overall urbanistic landscape could be nothing but worrying, to say the least, as the final purpose of the urban planning regulations consisting in the harmonious development of urban estates⁶ may be endangered.

3. Status of the sector coordinating PUZs in Bucharest

3.1 Suspension of sector coordinating PUZs

On 26 February 2021, the General Council of Bucharest Municipality adopted several decisions⁷ whereby the coordinating PUZs of sectors 2-6 were suspended. These suspension decisions were issued amid a legitimate concern about the diminishing green spaces in the city. While the goal was honorable, the means seem rather deficient from a legal perspective. It should be noted that the decisions of the General Council of the Bucharest Municipality are based on the provisions of art. 129 para. (2) letter c), para. 6 letter c) and of art. 139 para. (3) letter e) of GEO no. 57/2019 on the Administrative Code, which do not appear to provide a relevant, solid basis for such a bold measure.

Fortunately, there are legal grounds that could substantiate such measures, for example art. 64 para. (3)⁸ of Law no. 350/2001 which tackle the issue of *disputes generated by the suspension of decisions approving land management and urban planning documents*. At the same time, the legislator seems to have regulated the institution of administrative suspension in a text of a general nature, *i.e.*, art. 66 para. (1) of Law no. 24/2000 regarding the rules of legislative technique for the development of normative acts according to which *in special cases, the application of a normative act can be suspended under another normative act of the same or of a higher level, and in this situation the date on which suspension occurs, as well as its determined duration shall be expressly set out*.

In this context, we can also note that the symptoms of the sector PUZs unlawfulness started to appear even before their administrative suspension; thus, by Decision no. 996/2020⁹, the Bucharest Court of Appeal ordered the partial suspension of HCGMB (Decision of the General Council of Bucharest Municipality) no. 49/31.01.2019 regarding the approval of the PUZ for Bucharest Sector 3.

In the light of the above, we will show how these decisions suspending the PUZs of sectors 2-6 have changed the rules governing the procedure for obtaining a building permit.

On the one hand, the persons who applied for the issuance of an urban planning certificate before the enforcement of the suspension decisions¹⁰ will benefit from the PUZ provisions, in line with the provisions of art. 56 para. (5) of Law no. 350/2001, according to which the validity of the land management and urban planning documentation (PUZ) can be extended for those investments that started during the PUZ validity period and until they are finalized, if the authorization procedure for the execution of construction works was initiated during the PUZ validity period under the conditions of the law, corroborated with art. 2 para. (2)¹ of Law no. 50/1991 regarding the authorization of the construction works execution, according to which the authorization procedure for the execution of construction works *begins with the submission of the application for the issuance of the urban planning certificate* in order to obtain the building permit as a final act.

This principle was only partially implemented/reasserted in the normative acts adopted by the General Council of the Bucharest Municipality, where it is specified that the *suspension shall not apply to urban planning certificates for authorization purposes issued prior to the adoption of this decision and to building/demolition permits in the process of being issued for which urban planning certificates have already been issued based on the decision of the General Council of the Bucharest Municipality that was suspended*, a provision that refers to the moment when the urban planning certificates were issued, and not to the moment when they were applied for, as per the law.

Moreover, a provision potentially contrary to art. 56, para. (5) of Law no. 350/2001 was also introduced in the text of these decisions, according to which "*applications for the issuance of urban planning certificates for authorization purposes submitted prior to the enforcement of this decision and which are unresolved will be resolved according to the specific legislation in force.*" This provision can be interpreted in the sense that the applications in question will be resolved by taking into account the suspension of the PUZs and, as such, it is open to criticism as long as there is an express provision in Law no. 350/2001 (art. 56, para. (5)) which recognizes the extension of the PUZ by operation of law, as a consequence of the application submitted for the urban planning certificate, and this legal effect cannot be removed or blocked in any way by an act with a legal force lower than the law.

Therefore, as we have shown above, the interpretation that appears to be the most reasonable to us is that if an application has been submitted for the issuance of the urban planning certificate, the authorization procedure will be carried out on the basis of the PUZ, without taking into account its administrative suspension.

On the other hand, the provisions of the PUG will be fully applicable to the persons who applied for the issuance of an urban planning certificate after the enforcement of the decisions suspending the PUZs, as this is the only normative urban planning act applicable at local level in the case of the PUZ suspension.

HCCJ Ruling 10/2015 does not seem relevant for the administrative suspension of PUZs, as the suspension can only be temporary, and the Ruling expressly covers only the cancellation scenario.

3.2 Cancellation of sector coordinating PUZs

At present, the coordinating PUZs of sectors 3, 5 and 6 have been permanently cancelled¹¹ by the administrative litigation courts for various defects of legality, whereas the coordinating PUZs of sectors 2 and 4 remain suspended pursuant to the decisions of the General Council of the Bucharest Municipality.

The cancellation of the coordinating PUZs of sectors 3, 5 and 6 has the following reasonably foreseeable legal consequences:

(i) the effects of PUZs suspension on the issuance of the building permits mentioned under section 3.1 above, by reference to the provisions of art. 56 para. (5) of Law no. 350/2001.

Therefore, insofar as the procedures for obtaining the building permit were initiated after the cancellation of the PUZs, *i.e.*, when the application for the issuance of the urban planning certificate is made after this time, the building permit will be issued based on the PUG of the Bucharest municipality, which is a logical outcome given

that the PUG is the superior act in the hierarchy of urban plans and the only one that remains applicable (assuming that it will not be definitively cancelled as well) after the cancellation of the PUZs.

An argument in the same sense is also the analogy between the effects of the PUZs cancellation and the effects of repealing a repealing normative act, which are expressly regulated under art. 64 para. (3) of Law no. 24/2000 according to which the initial normative act is not reinstated by the mere effect of the repealing of a previous repealing act. We believe that this provision might also apply to the effects of the PUZs cancellation, at least by analogy if not directly, given that the PUZ is a normative act;

(ii) the effects in connection with the cancellation of the building permits referred to in section 2 above, in the context of the cancellation of the PUG.

For instance, in the case of issued building permits that were not subject to a pending appeal (before court) when the sector coordinating PUZ was cancelled, they can no longer be appealed and cancelled, as per HCCJ Ruling 10/2015.

Conversely, if these building permits were subject to an appeal (before court) at the time of the PUZs cancellation, such cancellation affected their validity and they would be cancelled, to the extent the specific legal terms of appeal in respect of these building permits have not expired.

4. Instead of conclusions

In the light of the above, we can only emphasize once again that the urban situation of Bucharest is, at this moment, uncertain and unpredictable.

This situation should be remedied by serious efforts for regulating and coordinating administrative policies and procedures, especially in the context of a European but also a national jurisprudence that imposes a certain regulatory standard in the administrative field by virtue of which subjects of law must be able to foresee, to a reasonable extent, the consequences of a certain particular behavior¹², in the concrete circumstances of the case.

Looking ahead, we do not think we have reasons to be too optimistic, as long as the authorities are talking about a horizon that extends to the end of 2023 for the adoption of a new PUG for Bucharest. Until that time, citizens will probably have the misfortune to live in a city lacking almost any urban plans.

1. See, for example, Civil Judgment no. 6054/17.11.2020 rendered by the Bucharest Court – Section II - Administrative and Fiscal Litigation; Civil ruling no. 1185/2020 rendered by the Bucharest Court of Appeal – Section VIII - Administrative and Fiscal Litigation.

2. Bucharest Court, Section II - Administrative and Fiscal Litigation, civil ruling no. 3605/2022.

3. A.S. Ciobanu, Drept administrativ. Activitatea administrației publice. Domeniul public, Ed. Universul Juridic, București, 2015, p. 111. (Administrative Law. Public administration activity. Public domain, Universul Juridic Publishing House, Bucharest 2015, p.111)

4. An opinion in this respect can be found in the dedicated legal doctrine: „If this solution can be accepted from the perspective of a typical administrative litigation action brought by a person aggrieved by an individual administrative act based on a final and irrevocable normative administrative act, in our opinion this solution becomes questionable in the case of administrative litigation actions filed by a third party against the administrative act addressed to another subject of law. We refer, for example, to building permits issued pursuant to a PUZ (zonal urban plan) finally and irrevocably canceled by the administrative litigation court. As far as we are concerned, we consider it unacceptable to conclude that all building permits based on which constructions

have already been erected under the conditions set forth therein are to be cancelled, if against some of these permits, cancellation requests are pending before the administrative litigation courts. In such cases, their settlement should follow its course until the end of the trial. The correct position in such a situation should have been the first assumption formulated by the Craiova Court of Appeal, Administrative and Fiscal Litigation Section, namely that the decision to cancel a normative administrative act produces legal effects only on individual administrative acts issued pursuant to it after the cancellation decision. Of course, an administrative authority in this situation should no longer issue individual administrative acts, based on a normative administrative act already cancelled by the court. (D. Apostol Tofan, Drept administrativ vol. II, ed. 5, Ed. C.H. Beck, București, 2020, pp. 68-69). (D. Apostol Tofan, Administrative Law vol. II, 5th edition, C.H. Beck Publishing House, Bucharest, 2020, pp. 68-69).

5. The considerations subsequently made take into account the normative acts on the basis of which building permits will be issued in the absence of a PUZ and after the cancellation of the PUG.

6. M. Duțu, Dreptul urbanismului, ed. a V-a, Ed. Universul Juridic, București, 2010, p. 67. (Urban Planning Law, 5th edition, Universul Juridic Publishing House, Bucharest, 2010, p. 67).

7. 1. Decision no. 65/2021 for the suspension of Decision no. 339/2020 of the General Council of the Bucharest Municipality regarding the approval of the Zonal Urban Plan – Sector 2, Bucharest;

2. Decision no. 66/2021 for the suspension of Decision no. 49/2019 of the General Council of the Bucharest Municipality regarding the approval of the Zonal Urban Plan – Sector 3 and of Decision no. 717/ 2019 of the General Council of the Bucharest Municipality regarding the rectification of Decision no. 49/2019 of the General Council of Bucharest Municipality

3. Decision no. 67/2021 for the suspension of Decision no. 443/2018 of the General Council of Bucharest Municipality regarding the approval of the Zonal Urban Plan - South Zone of Sector 4;

4. Decision no. 68/2021 for the suspension of Decision no. 242/2020 of the General Council of Bucharest Municipality regarding the approval of the Zonal Urban Plan – PUZ Coordinator Sector 5;

5. Decision no. 69/2021 for the suspension of Decision no. 68/2020 of the General Council of Bucharest Municipality regarding the approval of the Zonal Urban Plan (PUZ) –Amendment and Updating of Coordinating PUZ of Sector 6 and of Decision no. 336/2020 of the General Council of Bucharest Municipality regarding the rectification of Decision no. 68/2020 of the General Council of Bucharest Municipality

8. The full text of art. 64 para. (3) is: "Disputes generated by the issuance, revision, suspension or cancellation of the decisions for the approval of land management and urban planning documents shall be settled by the competent administrative litigation courts. The right to challenge approval decisions shall be time-barred within 5 years from the date of approval."

9. Civil Ruling no. 996/2020 of the Bucharest Court of Appeal, Administrative and Fiscal Disputes Section IX.

10. The decisions of the General Council of Bucharest Municipality came into effect on 1 March 2021.

11. PUZ sector 3 – finally cancelled by civil ruling no. 2569/2021, Bucharest Court of Appeal, Section IX of Administrative and fiscal litigation
PUZ sector 5 – finally cancelled by civil ruling no. 1988/2022, Bucharest Court of Appeal, Section IX of Administrative and fiscal litigation
PUZ sector 6 – finally cancelled by civil ruling no. 2167/2021, Bucharest Court of Appeal, Section VIII of Administrative and fiscal litigation.

12. For example, the ECHR Judgment of 25 January 2007, rendered in the case of Sissanis v. Romania as quoted in T. Toader, M. Safta, Romania's Constitution, 4th edition, edited and annotated, Hamangiu Publishing House, 2021, p. 3.