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missed in BL. Even in LSM a prior dialogue should be established (articles 27 and 29), i.e. »first sketch – proposal, followed by guidelines issued by the responsible authority«.

3. Conclusion

The laws on spatial management and building have caused numerous problems, un-proportionately many in view of progress. In the article I described »lost opportunities«, »lost themes«. The intent of the article is not to determine responsibility. I personally participated in parts of the process. However I am not arguing about, who could have added, stopped or even destroyed something. I have listed some themes, which should, in my opinion, be contemplated by the whole profession. There are still many traditional views about spatial management and especially physical planning. Above all more professional discussions should be started so that we could be ready to help in repairing some parts of the laws.

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Andrej POGAČNIK

The new spatial *ordnung*

So we have it: the new legal code. During the last years, almost a decade, we almost got accustomed to professional arguments, endless submission of remarks and suggestions to the drafts of the Law on spatial management (LSM) and Building Law (BL). Amongst planners such non-acceptance of planning laws became a normal condition and excuse for numerous professional issues. However a surprise ensued. Kopač (the Minister for environment, planning and energy, ed.) and his team suddenly speeded up, overtook critics of the drafts, bypassed fruitless procedures and managed to get the laws passed before January 1st 2003. Soon a stream of drafts of by-laws, regulations, ordinances and guidelines followed.

We can in principal ascertain that the two laws are »up-to-date« and pro-European. Their references were taken from the German law (Bundesgesetzbuch, 1990), but also Austrian and Italian (Cocchi, 1998), Danish, English, Finnish and Croatian laws, as well as European Union guidelines (EU Compendium, 1997)[1].

They are however extremely bulky – LSM has 191 and BL 239 articles. Alongside all the by-laws, which will be adopted soon, and all departmental laws, which directly influence procedures and implementation, substantial legal and planning knowledge will be needed for comprehensive mastering. The quantity of such experts in Slovenia is and will be inadequate. Detailed regulations concerning organisational structuring of the Chamber of architects and planners or expropriation procedures could probably be included in another Law (similar to the Baugesetzbuch). Let' s nevertheless review the advantages and above all deficiencies of the professional contents of both laws.

The Strategy of national spatial development (By-law on the strategy' s contents, April 2003 and Strategy, April 2003) has become an exceptionally modest document. Why? Where are the times when Slovenia' s plans were drawn in the scale 1:250000, with very detailed spatial analyses and which produced the concept of primary land use based on natural qualities at an acceptable level, even by present standards! The new Strategy is a diluted concoction of very lax concepts, presented in the scale 1:1000000. It should however include contents characteristic for a regional plan, after all the country' s size can compare to a Central-European region. A »National regional plan« would provide substantially concrete initiatives for plans of Slovenian regions, which should »*from bottom up*« also integrate the initiatives of their component municipalities.

The regional concept (why not regional plan?) of spatial development is surely a welcome document (By-law on the regional concept' s contents, 2002). Its' main purpose is to position national infrastructures and limit protected areas stretching across municipal boundaries and the national border (By-law proposal, 2002). However, will municipalities voluntarily join into rational planning, functional, urban, technical and natural regions? The examples of the »strange« Lower Posavje region and the local-patriotic enthusiasm for the too small Karinthian region are more than eloquent.

With our »urbanistic concept« we are again stuck halfway to the developed world. Why not speak about the urbanistic plan (even general urbanistic plan or master plan) or a municipal plan as it is known in the developed countries, with clearly defined content of urban development? This is a plan that would emphasise the autonomy of cities (Dimitrovska-Andrews, 1994), their specificity and independence from municipal, regional, even national strategies. The same applies to »landscape concepts«. Why aren' t they simply called landscape plans, whose main tasks are landscape design, landscape maintenance and protection of the natural environment?

The idea behind spatial order – »*ordnung*«, is flawless. The National spatial order determines and positions (or at least reserves place for) important national buildings, especially infrastructure (Proposal of order, 2003). With the order the state would, in a subsidiary sense, regulate all the contents, which small, understaffed or uninterested municipalities couldn' t or wouldn' t, especially the range of plot sizes, built-up ratio and use, possibilities for parallel or temporary uses, methods of respecting regional typology, methods of dealing with exceptional landscapes, areas with preserved high quality architectural identity etc. The National order should define compulsory utilities, methods of involvement in urban development corridors, typical Slovenian suburbs, urbanised countryside etc. In short, general and common contents of municipal orders should be included in the national order. In this way municipalities wouldn' t have to keep reinventing gunpowder or adjusting professional principles to a »mayor' s urbanism«. So far so good, but we are afraid of ensuing over-normativism. The first draft of the by-law (By-law on the national spatial order, 2003), containing nineteen articles, stipulates production of: »basic tasks«, »detailed rules« and »measures and conditions ...«. Who will be able to comply to all these orders with sensible contents that will ensure enough creative freedom and respect for constant changes in the physical environment?

The Municipal strategy and spatial order – as stipulated in the law and by-law proposal – hold water (also Geršak Pod-

breznik, 2002, Konečnik-Kunst et al., 2002). The desire of the law' s authors is quite clear that spatial orders can in certain cases grow into »mini« urbanistic plans or regulatory documents for smaller countryside settlements, especially with provisions about building lines, plot sub-division etc. This is very important because most of the several hundred Slovenian urban settlements will not be developed according to urbanistic concepts, i.e. between municipal strategies and permitting there will only stand The order! Undoubtedly this segment of planning documents lacks an act for rehabilitation of villages or urbanised villages, which would simultaneously direct agrarian ecology, re-parcelling of plots, village embellishment for tourism, cohabitation of urban settlement with farms etc. The Municipal spatial order should also determine a minimal number of compulsory location plans on its' territory, especially for contained, complex developments. In short, it should delineate areas to which location plans apply. In general the order should clearly structure space into morphological (even landscape, agrarian, forest and not only urban) entities of uniform development.

The Location plan has become an excessively demanding and expensive document (By-law on detailed contents, 2003). When writing the by-law I tried to simplify it, but couldn' t because of numerous provisions in LSM [2]. Thus numerous expert guidelines already produced for the order will have to be repeated, various opinions (concordances) will have to be obtained, while the initiator, consultant and investor will have to muddle through two planning conferences, exhibitions and a public hearing. What for?

With the conditional location plan and urbanistic contract two important steps were taken towards more flexible, vital and »investor-friendly« urbanism. But the range of possibilities is still kept modest. With the urbanistic contract much more possible compromises could have been offered when negotiating relations between private and public interests, even concerning intensity of use, dimensions, built-up index, use (which could adapt to the investors desires, if part of the eventual profit would be compensated with adequate services to the public sector).

The Location plan is a rather inaccurate term. My students momentarily confuse the »old« location plan (for roads, power-lines etc.) with the new one, which has become the common name for all documents, even development plans and rehabilitation plans (supplementary development, utilities). Even in wider professional circles, not only among the lay public, I am expecting confusion. Why didn' t they (the authors of the law) maintain the well-known, good old »building plan« and the globally recognised »urban rehabilitation, renewal or reconstruction plan«? In short, when giving names to particular types of development plans, much more flexibility would be appropriate, whereby the name of the document would undoubtedly also proclaim its' content.

The legislator tried to simplify the procedures by replacing (previous) concordances with (present) opinions, limiting periods needed for issuing of opinions, possibilities for disregarding negative opinions etc. In my opinion, opinions will only be renamed concordances. Opinions will be, similarly as before, conditioned with various additional demands and developers will be burdened with corresponding new obligations and costs, if the opinion provider will not succeed in granting or enforcing one' s negative opinion.

Success or failure of the new law will be seen – just as in all the previous ones – in issuing permits for development. Procedures concerning building permits haven' t significantly changed, except that a unitary permit (i.e. location permit and building permit) is now the only possibility and not one of two possibilities. Independent location permits have been scrapped, whereby the risk taken by an investor increases when purchasing land, preparing planning documentation concerning the site itself as part of the documentation needed for obtaining a building permit, in the design phase, when applying for opinions etc. The investor can however rely on the legal validity of location information, but at the end of the day this could prove costly for municipalities.

The law' s authors thought about simplifying procedures for simple, temporary and auxiliary buildings, property maintenance (reconstruction, renewal etc.), changing the property' s use and all the actions taken in the owner' s flat or office interior. Concordance with the site information will suffice (in certain cases even without one)! This is the most dangerous trap in the new law. Now all small investors in the countryside and cities will try to build almost anything, e.g. additional floors, reconstructions of attics, opening of balconies and terraces, building garages, barns, fences and garden huts, supporting walls etc., without a permit, whereby the legal ground for all will be the location information. Who will check all these developments, control them or impose sanctions? Maybe the present inspectorates, administrative and judicial bodies or the police with their renowned efficiency? The problem is even more enhanced by the limiting of influence of neighbours, citizens and others in permitting procedures. Since they are not legal parties in the procedure they cannot prevent construction, while unjustified appeals could prove to be costly affairs. By dismissing »neighbourly envy«, obstructions and nastiness an important Slovenian self-regulating mechanism was scrapped, which will be hardly compensated by location information and its' control.

Several strange provisions were squeezed into the law. The provision that a building can be positioned at a distance of half the building' s height from the plot boundary is fine. One would however contest the provision that garages, pavilions, agricultural outhouses and other less important buildings can be positioned 1,5 metres from the plot boundary, and another provision stipulating that fences can be built half a metre from the neighbouring plot on one' s own land without asking or obtaining a permit, while the leftover land is given to the neighbour.

One of the weaknesses of the new law is poor or unclear harmonisation with other laws. Maybe the exceptions are laws on mining, agriculture, cultural heritage, protection from contingencies and the administrative procedure. In most cases however two or more laws will apply to the same space, probably with differing demands. Who has – or will have – a horizontal or vertical overview of all the laws?

Being an architect I was surprised and saddened that the laws hardly use terms, such as: culture of spatial management, urbanistic and landscape design, visual quality, identity etc. The culture of cities and landscape are amongst the basic identities of a nation and as such should have a place even in the laws. What will be the rationale of authority when issuing permits?

Nevertheless, in the proposals for by-laws one can find provisions concerning design quality. However stereotypes about harmonisation with historical heritage prevail. In ar-

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ticle 37, the National strategy actually stipulates that: »the structure of buildings, streets and other public places, such as squares, parks and playgrounds (i.e. everything), has to follow traditional urban disposition«! I wonder whether the museum in Bilbao or the Sydney opera follow traditional urban disposition? They don' t? Have Bilbao and Sydney lost or gained anything when it comes to design?

A special chapter of BL deals with organisation of the profession. A new chamber (of registered professionals) is fine, but numerous spatial planners have been evidently unjustly victimised with the new »P« license. Geographers, surveyors with planning degrees and communal (utilities) engineers can obtain the license, but they can only work on strategies, regional concepts and some of the planning orders, all of which is in complete disproportion to their knowledge when compared to architects and landscape architects. For decades architects have been complaining that civil engineers and even engineering technicians are designed buildings. Now the profession of architects is practising the same terror over other professions: a civil engineer with a degree in road engineering won' t be able to take responsibility for a location plan for a road or railway, a mechanical engineer won' t be able to take responsibility for a location plan for a pipeline. But what do architects now about designing routes, technologies and specialised regulations concerning technical infrastructure?

The new laws have sharply empowered the campaign against illegal building. This luggage is definitely of the type Slovenia doesn' t need on accession to the European Union. We can only hope that builders of illegal buildings won' t be taken under the wing of the media, marginal groups of »civil society« – or better still civil disobedience – which always dilute administrative procedures, the work of inspectorates, police, prosecution, courts and sentencing.

Enforcement of both laws is of key importance for the success and social status of the profession. Efficient enforcement is crucial although we can add hundreds of new articles, penal provisions, by-laws, ordinances and guidelines. It seems that the overwhelming quantity of legal provisions are substitutes for cultural relations to the environment, respect for legality and considerations for interests of our neighbours and fellow-citizens. We could in fact live with much simpler laws. Even Hamurabi' s law, the Building code of the Carniola Duchy or the Building law of the Kingdom of Yugoslavia could in many aspects still be operational.

The law is relatively unfriendly to investors, since it mainly limits, prohibits, demands and conditions. Stimulating contents cannot be found, even for demographically endangered settlements, old industrial or mining towns, but also promising future economic zones. It doesn' t respond to spontaneous disappearance of cultural landscapes because of forest overgrowth. In relation to private ownership of property the laws are rather social, even socialist, and much less market- or liberal oriented. The ideals of the welfare state have in conjunction with principles of sustainability and doctrines concerning protection of nature and the environment produced very limiting laws, which significantly curtail rights to property ownership and especially enjoyment of benefits from property. Consequences can go both ways: beneficial for the public interest, environment and wider society, when enforcing the public domain, bad for offer of space as a commodity in economic success, dynamic competitiveness or expansion. However, only the latter can ensure resources for the welfare state, clean environment, purchase of property for the public domain etc.

We have to be aware that we will be living with the new planning legislature for some twenty years. Recent laws (stipulating planning procedures, documents and contents) were adopted in 1967, 1984 and 2003, i.e. in periodic cycles of almost 20-year. With positive action even the new laws could be a good, even excellent foundation for quality changes and preservation of our space, otherwise not. Twenty years from now I expect a planning legislature common to all European Union countries. In view of the disorder and poor discipline of the Slovenian profession and individual players when planning and the environment are the concern, this wouldn' t be bad.

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Notes:

[1] Also Kongas (1995), examples of the »Bestimmingsplan«, Denmark, The »Plan particulier d'amengement« and »Plan d'occupation des sols«, France.

[2] Also Hudoklin (2002), Prelovšek (2002).

For sources and literature turn to page 14.

Alma ZAVODNIK LAMOVŠEK

Spatial planning on route to a systems solution

1. Changes

Soon after independence, spatial planning in Slovenia began experiencing significant changes. The relations between the valid and new social order transformed rapidly. In physical planning changes were most evident on the local level, soon after the Law on local self-government was passed (Official bulletin, No. 72/93). It formalised the division of former communes into smaller territorial units, thus shattering the recognised communal system. This was coupled with reform of government organisation, whereby a massive gap emerged between the state and the local communities. Responsibilities of municipalities and the state were redistributed. Thus municipalities lost many of their former responsibilities, which were transferred to administrative units (first tier of central government) while many remained on a superficial, general level. Similarly, in physical planning, municipalities could in principal exercise all the responsibilities concerning physical planning on their territories, but practice showed a different image. The problems were mainly consequences of over-generalised legal provisions, since the division of responsibilities between the state and municipality was not clearly specified. From the