

European Systems of Spatial Planning

Organised by the Croatian Chamber of Architects and Association of Croatian Urban Planners

27-28 of May, 2021

How does the spatial planning work in Italy???

- 3 parts to shortly analyse ...
 - 1. the law sources (national and regional)
 - 2. The most important spatial plans and their mutual relation
 - 3. The last frontier of spatial planning: the urban regeneration

Part 1: the law sources

- The Italian Spatial Planning is built on both national and regional law sources
- As a matter of fact, according to art. no. 117 co. 3 of Italian Constitution «**land use planning**» is a concurring legislative matter (shared between the State and the Regions)
- What does it mean? The State can regulate the government of the territory through some “general laws” which establish guidelines, but the more specific regulation is determined by Regions (regional laws)
- What does “**land use planning**” mean? It’s the evolution of urban planning ...

The land use planning and its difference with the urban planning

- The expression «Urban planning» was previously used in Italian Constitution until 2001 (art. 117);
- After an important constitutional reform, art. 117 was modified and the expression “urban planning” was substituted by “land use planning”.
- What is the difference? **Urban planning is focus on the planning activity in urban centres**
- On the contrary, the **land use planning has a wider meaning**, which includes not only the urban planning activity but also other interests (landscape, environmental, cultural and the safety which are protected by other bodies)
- These other interests are very sensitive and they must be considered in the spatial planning policies because they influence the development of planning activities
- E.g. spatial planning activity cannot authorize the building of a motorway next to an archaeological site
- **Urban planning on its own is not able to consider and value these interests** → this is the reason why the Italian Constitution and the law sources prefer to use the expression “land use planning”

The national law source

- National law source: the General Urban Planning Law
- L. no. 1150/1942 was modified several times during the years but **it's still formally valid**
- Please note: it's a very ancient law that was published before the end of the 2nd world war → it uses the expression "Urban Planning"
- It has been (and still is) a guideline for all the following land use planning law published by Regions
- Which is its main characteristic?
- The municipality is the main level for the urban planning regulation → the municipal urban plan is the main plan to regulate the use of the urban areas
- **The municipality is the "protagonist" of Italian urban planning activity in the second half of the XX century**
- The scheme of the l. no. 1152/1940: the Municipality adopts the urban plan according to guidelines established by the Department of Public Works, which has to approve the plan → **a strong hierarchical method** (still valid today, with some important changes)

The regional law sources

- And what about the regional laws???
- The 70's was the decade of the delegation of the legislative power on many subjects from the State to the Regions
- The State decided to delegate to the Regions also the legislative power on urban planning

The regional law sources on the land use planning

- Three law generations + 1 from 70's to nowadays
- 1st generation: **urban planning** regional laws of 70's → Regions start to use their legislative power on urban planning;
- 2nd generation: 80's → Regions develop their legislative power on **urban planning** starting to consider more the sensitive interests (especially environmental and cultural interests) → such interests are regulated also with specific national laws (l. no. 431/1985, l. no. 349/1986, l. no. 394/1991) → more attention is paid to these aspects;
- 3rd generation: from the half of 90's to nowadays → regional law on **land use planning** → the municipal urban plan is built on a dichotomy:
 - **A) the structural part**: it regulates the invariant parts of the territory establishing the areas where building activity is allowed and not allowed → this part is valid until it is changed with an administrative measure established by the Council
 - **B) the operative part**: establishes how to realize the rules established by the structural parts (distance, height, extension of buildings/public works). This part is valid for 5 years)
- Please note: both these parts are defined only by the Municipality ...

The 4th generation of regional law sources

- What about the regional laws of 4th generation?
- There's just one law: l. no. 24/2017 Emilia-Romagna
- This law is unique in the legal framework because ...
- The negotiation between the municipality and private is fundamental in the definition of the urban plan
- **A more incisive negotiation between public bodies and privates is established**



The role of privates in spatial planning

- The negotiation between public bodies and privates has been being very common and a fundamental aspect for the development of spatial planning ... but ...
- **Public-privates agreements have been always used to execute the provisions of the urban plans**, which were previously defined only by the Municipality ...
- **L. no. 24/2017 Emilia-Romagna has a different approach**: the urban plan by Municipalities is a very flexible tool, that establishes just some guidelines about urban planning.
- **These guidelines need to be specified through public-privates agreements** →
- For example ... the urban plan establishes the areas where building is allowed ... **but does not establish the building rights** (how sealing soil) →
- **these rights are defined in the negotiation**
- **Therefore, according to l. 24/2017 E-R, negotiation concern also the regulation phase of the urban plan (not just the executive phase)**

- **Please note**: during all these years, the urban plan by the Municipality has been the most important tool for spatial planning ... but now it's less important than in the past ... why???

2. The most important spatial plans and their mutual relation

- The consideration and protection of sensitive interests (environmental, cultural, landscape, soil) have determined **a loss of strength/importance** of the urban plan by the municipality
- Nowadays, such plan is less important than in the past because of these sensitive interests
- These interests are regulated **by other public bodies** – more important than the municipality – **which adopt their own spatial plans!**
- The municipal urban plans **must** obey and respect the provision established in these other spatial plans
- This means that urban plans have to comply with the planning measures established by these “superior plans”
- Urban plans have lost part of their importance due to the safeguard of the sensitive interests

... which are these other spatial plans??

- Which are these other spatial plans whose provisions prevail over the urban plans?
- Parks plans, landscape plans, soil plans (to prevent the hydrogeological risk) ...
- All these plans are **hierarchically superior** to the municipal urban plans;
- All these spatial plans are defined by certain public bodies which have a specific spatial planning power and competence **in accordance with some specific national laws**
- These public bodies are national or regional

A short list of national and regional public bodies with spatial planning legislative competence

- **A) The Park body** → according to l. 394/1991, the Park body is meant to safeguard and manage the protected area.
- It's a public body under the control of the Department of Environment and it disposes of a spatial planning power known as "Park Plan". The provisions of this plan prevail over the urban plan;
- **B) The Basin Plan** → according to legislative decree no. 152/2006 the Basin Plan is established by the Basin Authority (8 national basins in Italy).
- The Basin Authority is a national public body under the control of department of the Environment. Its provisions prevail over the urban plan;
- **C) The Landscape Plan** → according to legislative decree no. 42/2004 the Landscape Plan **is established by Regions** in agreement with the Department of Culture (Landscape is considered part of the Cultural Heritage).
- Its provisions prevail over the urban plans.
- These are 3 reasons why the urban plan by the municipality has lost importance because of other "crossing interest" which are protected through other spatial plans

Is there a hierarchical order among these 3 spatial plans?

- The Landscape Plan should be the most important because landscape, which is also a natural resource, is considered part of the Italian Cultural Heritage → therefore this plan aims at preserving and value both natural and artificial goods according to an identity strategy;
- But .. Doctrine and jurisprudence remind that all these plans are thought to preserve a very specific interest (landscape, environmental, soil/water) ...
- Therefore, the relation among these plan should not be strictly hierarchical ...
- Each of these 3 competent public bodies should adopt (or modify) its own plan consulting the other public bodies because environmental, landscape and protection of soil interests are very much connected.
- We can call this approach “loyal collaboration” among the public bodies
- Please note that municipal urban plan have to respect the previsions of these “superior plans” →
- The result: the crisis of the urban plan: these are the reasons why the municipal urban plan has lost part of its importance

3. The last frontier of spatial planning: the urban regeneration

- Is there the possibility to revitalise the urban plan by the Municipality?
- It's an interesting question which involves the matter of urban regeneration
- Urban regeneration is the evolution of the urban planning → it aims at preserving the soil sealing through the re-cycle (reuse) of unused urban heritage
- This policy must be developed “inside” the urban planning activity
- Municipalities have to define their own urban plans limiting the new constructions and giving priority to the new use of abandoned areas/buildings
- This is a fundamental challenge for the revitalisations of our cities and the urban plans have a very important role to win such challenge
- They can still be considered a basic tool in spatial planning thanks to the urban regeneration