

CASE URBAN PLANS

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I will try to present you with an example in which CSOs, despite the strong positions of one of the biggest municipalities in Skopje, managed to change the detailed urban plan

Subject: Initiative against the decision for adoption of a Detailed Urban Plan for City Quarter "306",

Basis for this initiative was: Decision for adoption of a Detailed Urban Plan for City Quarter "306" in 2016,

Introduction

An initiative submitted by CSO from Skopje, with Decision on the basis of which the Constitutional Court initiated a procedure for assessment of the constitutionality and legality of the Decision for adoption of a Detailed urban plan for City Quarter "3 06",

Context

The rule of law and the arrangement and humanization of space and the protection and promotion of the environment and nature are fundamental values of the constitutional order of the Republic, in which sense the legislator with the Law on Spatial and Urban Planning prescribed precise regulations regarding spatial planning, exactly determining the plans for spatial and urban planning, their content and the procedure for their adoption.

Preparation of a strategic assessment for the impact on the environment and human health is part of the procedure for adopting plans for spatial and urban planning. Thus, the legislator prescribed that in the procedure for adoption of the urban plans referred to in Article 7 item 2 of this Law, the state urban planning documentation, the local urban planning documentation, the urban planning documentation for the tourist development zone and the urban planning documentation for autocamp of strategic assessment for impact on the environment and human health, in which sense the adopter of the urban plan is obliged within three working days from the date of approval of the planning program which determines the boundary and content of the planning scope, to make a decision to implement or decide not to conduct a strategic environmental and human health assessment in which the reasons for the

implementation, ie the non-implementation of the assessment in a manner and procedure prescribed by the Law on Environment are explained.

According to the Law on Environment (Article 65 paragraph 6), the body that prepares the planning document is obliged to make a decision for implementation or a decision for non-implementation of a strategic assessment which explains the reasons for implementation, ie non-implementation in accordance with the criteria set out in paragraph (4) of this Article. According to paragraph 10 of the same article, the body that prepares the planning document within five days from the day of making the decision from paragraph (6) of this article, together with the forms from paragraph (20) of this article is obliged to publish them on its website in a manner prescribed by the act adopted in accordance with Article 61 paragraph (8) of this Law Pursuant to paragraph 11 of the same article, against the decision referred to in paragraph (6) of this Article, the public has the right to appeal within 15 days from the day of its publication on the website of the body that prepares the planning document to the minister who manages the body of the state administration responsible for the affairs of the environment when the decision is made by the mayor of the municipality, the municipality in the City of Skopje or the mayor of the City of Skopje, that is, to the State Commission for deciding in administrative procedure and employment procedure in the second instance when the decision is made by a body of the state administration. According to paragraph 12 of this article, the body that prepares the planning document within five days from the day of making the decision from paragraph (6) of this article, together with the forms from paragraph (20) of this article, as well as the other accompanying documents is obliged to submit them to the body of the state administration responsible for the affairs of the environment.

Having in mind the above, it follows that there is a legal obligation for the municipality, in the procedure for adoption of DUP, **to make a decision for implementation or decision for non-implementation of strategic environmental impact assessment which explains the reasons for implementation**, ie non-implementation of strategic assessment. However, the body that prepares the planning document is obliged, in accordance with Article 65 of the Law on Environment, to which the Law on Spatial and Urban Planning refers, to publish the said decision on its website, together with the relevant forms,

For the elaboration of this case, a review of the provisions contained in constitution of the Republic of North Macedonia, the Law on Local Self-Government, the Law on Spatial and Urban Planning, as well as the Law on Environment. The content of the specific decision of the Constitutional Court is publicly published on the website http://ustavensud.mk/?page_id=5267&lang=en.

The Constitutional Court at the session held on June 20, 2018, made a decision revoking the Decision on the adoption of a Detailed Urban Plan for City Quarter "3 06", This decision started to have legal effect from the day of its publication in the "Official Gazette of the Republic of North Macedonia".

The reason for making this decision was the initiative submitted by CSOs , on that basis the Constitutional Court initiated a procedure for assessing the constitutionality and legality of the above, because the question of its compliance with the Constitution and the Law was raised.

During the procedure, the Constitutional Court found at the session that the Council of the Municipality of Karpos, based on Article 22 paragraph 1 item 1 of the Law on Local Self-Government ("Official Gazette of the Republic of Northern Macedonia" no. 5/2002) and Article 26 paragraph 4 line 1 of the Law on Spatial and Urban Planning, at the forty-fourth session held on January 5, 2016, has adopted Decision number: 09-89 / 3, for the adoption of a Detailed Urban Plan for City Quarter "3 06", in the Republic of Northern Macedonia the laws must be in accordance with the Constitution, and all other regulations with the Constitution and the law. Everyone is obliged to respect the Constitution and the laws.

Acting on the case, the Constitutional Court found that in the specific case, the Mayor of the Municipality of Karpos, , made a Decision not to implement a strategic assessment in which in point 1 he determined that for the planning document Detailed Urban Plan for City Quarter "3 06", , which is adopted in accordance with the Law on spatial and urban planning, it is not necessary to conduct a strategic environmental impact assessment in accordance with Article 65 of the Law on Environment. Item 2 of the Decision states that the Decision, together with the forms for determining the need for implementation or non-implementation of a strategic assessment is published on the website of the Municipality of Karpos www.karpos.gov.mk. According to item 4 of the same decision, an appeal against this decision can be submitted

to the Mayor of the Municipality of Karpos within 15 days from the day of publishing the decision on the website.

Given this legal and factual situation, it follows that the Decision for non-implementation of the strategic assessment was not posted on the website of the Municipality of Karpos, as prescribed by the Law on Environment, and as stated in the decision itself (item 4).

Starting from the fact that the publication of the decision for implementation or non-implementation of the strategic assessment on the website of the municipality is a legally prescribed obligation when adopting a detailed urban plan and that against this decision the public has the right to appeal within 15 days from its Publishing on the website of the body that prepares the planning document, it follows that the publication of the decision for implementation, ie non-implementation of the strategic assessment on the website of the municipality is part of the legally prescribed procedure for adopting a detailed urban plan, on which the information of the public and the exercise of the right to legal protection in the field of protection and promotion of the.

Conclusion

We are witnessing uncontrolled construction all over the country, although this is most evident in the capital. More and more greenery is being destroyed and replaced with concrete and high-rises. Very often such activities take place overnight, permits are issued in a very short time, and the public is not informed in a timely manner, although it has the right to access information and participate in the adoption of decisions. Rules and laws are often circumvented, and procedures are non-transparent and secret.

Any citizen can initiate to determine the constitutionality and legality of a specific legal act. This opportunity gives hope that the unconstitutional and illegal decisions of state bodies and institutions will be put out of force.

On the other hand, the competent authorities and institutions must always make available to the public all the issues that directly affect the citizens, as well as enable public participation in policy making and decision making.