

REVIEW ARTICLE

Sustainable urban rights

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ABSTRACT

This paper aims to study behavior in the urban environment. In the city, because any intervention will have a global impact on it, it reflects the rights of the city, such as the right of citizens to participate in determining their future, in order to achieve a fairer order of things. On the other hand, the issue of incorporating the concept of sustainable development into our law is being studied, which means promoting action in the urban environment, focusing on the restoration, regeneration, and reform of existing cities rather than the construction of new cities. In this regard, mainstreaming sustainable development means a Copernican transformation of land policy, which is no longer a resource but the first natural resource as always. As mentioned earlier, actions in the urban environment include restoration and renewal. Therefore, the focus of the work is to study the so-called actions in the urban environment. Through these actions, we can innovate urban planning and occupy free or public spaces to improve accessibility. House, wait. There is little originality in the legal system, while the provisions on the participation and implementation of actions strongly review the compensation system of urban legislation and finally study urban recovery operations and relocation and return operations.

Keywords: urban rights; sustainability; participation; recovery; regeneration; update

1. Introduction

The purpose of this study is to study the urban environmental performance defined in Article Trlsru, that is, the performance aimed at building restoration and urban renewal, provided that these performances contribute to or, more accurately, are the necessary basis for the rational use of natural land resources. In this sense, land is no longer understood as the object of urban management.

However, the city is a whole and complex system^[1]. Therefore, the intervention of one party will inevitably have an impact on the whole city. Therefore, urban planning and decision-making are civil

rights. As Lefebvre said, the city has the right to shape the city according to the general interests of residents rather than market interests. This highlights the right of citizens, as a collective entity, to be part of decisions affecting cities and, of course, to participate in decisions affecting housing restoration, public space, and infrastructure reconstruction in order to seek urban space that contributes to the realization of their civil rights.

The urban space described by Lefebvre is bound to contribute to sustainable urban development, combining environmental, economic, social, and cultural requirements. In this space, basic rights such as participation, and guiding principles

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such as health, housing, or work can be developed. As Menendez Rexach^[2] said, the principle of sustainable development has “common general goals (eradicating hunger and poverty, ensuring decent housing, etc.) and more specific goals (compact cities, rehabilitation, building energy efficiency, etc.).”

The focus of this work is to study the specific objectives of sustainable urban development. As mentioned earlier, these objectives are, *inter alia*, to take action on urban land, on the one hand, to protect and repair existing buildings, especially those used for housing, on the other hand, to improve these buildings and optimize their energy efficiency from an environmental perspective, and finally from a social perspective, accessibility and mobility. From the perspective of public space, these actions aim to modernize the urban environment in which people live in society by renewing and improving urban infrastructure, public space, and general facilities. In studying these acts, we must address procedural issues, such as their rules of expression, and finally their legal system, and finally, the right of legal occupants to resettlement and return.

2. Urban rights

Urban rights is a term coined by Henry Lefebvre in 1967. As the right of citizens to decide, create, and produce cities, Harvey^[3] will say a few years later that this right “goes far beyond the freedom of individuals to obtain urban resources^[4]: It is the right to change themselves by changing cities. This is also a common law, not a personal law because this transformation inevitably depends on the exercise of a collective power to reshape the process of urbanization. As I want to prove, building and rebuilding our cities and our own freedom is one of our most valuable and neglected human rights^[5].”

The right to a city is a new right, an ongoing right, that is closely related to the right to housing because the quality of living referred to in Article 47 of the European Community is impossible or

incomplete in degraded housing. Only in slums with high-quality public facilities and urban infrastructure, as well as public spaces accessible to all, can we achieve full social life in an excellent environment. As Parejo Alfonso said, cities are “places that create conditions for the development of social personality. The law revolves around three basic axes: (a) the sufficiency of citizenship; (b) democratic government; and (c) property and the social role of cities.”

This emerging human right “determines the recognition of the status of Dania because the city is regarded as a collective public space that guarantees the widest enjoyment of political, economic, social, cultural, and environmental rights by all its residents. The right to a city is based on the rediscovery of the city as a space of democratic coexistence and diversity, which is declared and recognized to ensure the realization of freedom and equality. “As stated in the World Charter of Urban Rights, everyone has the right “without distinction as to sex, age, health status, income, nationality, ethnicity, immigration status, political, religious, or sexual orientation.”

Therefore, this is a collective right, and citizens have the right to participate in the decision-making of issues affecting the city now and, in the future, such as the formulation, determination, implementation, and monitoring of public policies affecting the city. “Cities are at the heart of current economic, environmental and social challenges. The engine of the European economy and the catalyst for innovative and sustainable solutions”.

The exercise of the right to freedom, equality, and participation can enable us to move towards an environmentally, economically, socially, and culturally sustainable city and an inclusive and resilient city, that is, to maintain our image after an impact or disaster while making a positive contribution to adaptation and transformation. This will enable us to make progress toward achieving the sustainable development goals^[6].

An inclusive city is a social and legal need to

move towards this city for all people, including women, girls and the elderly, to provide adequate funding for their needs, and to provide safer and more inclusive funding for the most economically vulnerable. In short, cities must participate in the goal of reducing inequality and adapting them to all people living in them.

In this regard, it should be recalled how legislation provides for the effective realization of the principle of equality between men and women. Therefore, Article 31 of Organic Law No. 3/2007 of 22 March on effective equality between men and women stipulates:

“...Urban and land planning policies should take into account the needs of different social groups and different types of family structures and should promote equal access to urban services and infrastructure.”

A sustainable, inclusive, and resilient city requires planning and management tools that focus on responding satisfactorily to the needs of citizens and generating urban governance, making citizens the protagonists of the necessary changes. Or, as Gardini said^[7], a city for all needs to “start from an unshakable concept, that is, an urban area is first and foremost a place where communities live, so it is restricted by public planning powers, which must ensure social functions. Urban planning negotiations must be firmly rooted in democratic participation, start at the bottom, and liberate from real estate as much as possible.” Finally, the question raised was a broader right, one of the implications of good governance.

As Ponce said, the right to equality can be realized through urban planning, which is a legal requirement. According to the above provisions, article 14 of our constitution and article 2.2 of Trlsru. The principle of equality between citizens and owners in urban planning law is the subject of various decisions of the Supreme Court. Therefore, reference can be made to the decisions of 25 May and 23 June 1985, 18 February and 11 March 1998, and 11 February 2000 (RC 2263/2016)^[5].

Therefore, in the new century, we need new tools to enable us to have new urban planning and pay more attention to the restoration and reform of existing communities, which will help to strengthen the urban structure and avoid the gentrification that has occurred in some areas of our city, that is, taking into account the new needs of the people.

On the proposed road, in order to renew or renew existing cities and protect and restore our buildings, the first instrument is Law No. 8/2013 of June 26, which is amended by Law No. 8/2007 (13r) of May 28 and Royal Decree No. 7/2015 of October 30 (hereinafter referred to as Trlsru), which is merged with Law No. 8/2007 (LS) of May 28. However, we need to continue to support the search for new tools, perhaps urban planning, perhaps soft law rules, and, in any case, let citizens play a leading role, as said.

3. Sustainable urban land legislation

For most of the 19th century, the city developed steadily throughout almost the 20th century. The first was to meet the housing needs of rural residents, who emigrated to the city because of the economic growth brought about by the industrial revolution, the second was to improve the living conditions of residents; and finally, in a very speculative way. In this regard, urban design is an appropriate tool to guide urban expansion. Cities have experienced a process of sustained growth and therefore, a gradual loss of identity. Our city is growing at an exponential rate. Therefore, urbanized land and natural land that can be transformed into new cities have always been the protagonists of urban law. The most complex systems in our legal system are concentrated in this field: urban standards, transfers, owner obligations, etc. They can provide the necessary funds for the process of building a “new city^[8]”.

In the 21st century, the main body of China’s urban planning law should be urban land and cities. As Menéndez Rexach said, urban expansion has

stopped or must stop, and the transfer of rural land “should at least have good reasons, if not exceptional.” Mr. Verdaguer accurately expounded some characteristics of the urban system that prevailed throughout the 20th century in China. Among these characteristics, planning clearly obeys the economic strategy based on resource consumption, and urban planning based on land urbanization, and gives priority to the change in land use value. This means ignoring all uses that are unlikely to generate capital gains and simplifying and unidirectionally considering the environment based entirely on the impact of urbanization on nature.

Our demographic data confirm the undeniable-ity of new soil consumption, which indicates that the trend of nutrient growth is close to zero or even negative. On the other hand, demographics show significant changes in trends, undoubtedly in the case of population aging, which has become more dependent on different resources, public space, and specific collective facilities. This requires the adjustment or updating of allocations established for a younger population structure, which affects both public allocations^[9] and private allocations (addressing accessibility, housing, and mobility is a challenge in current urban planning).

On the other hand, this new policy must improve the environmental efficiency of cities and limit the consumption of natural resources. Technology is increasingly conducive to the reuse of some consumer goods. The new sustainable urban design must tend to enable a city to reduce environmental consumption (soil, water, and air) and produce waste at least in accordance with the target hierarchy stipulated in Law No. 22/2011 of 28 July, contaminated waste and soil (prevention, pretreatment for reuse, recycling, other types of recycling and safe disposal).

These sustainable development goals are contained in Trlsru, which takes sustainable development as one of its goals and as the guideline of the law. Therefore, the statement contained in Article 1 is very clear. Because of its importance, we record it

verbatim and confirm that the purpose of the law is to ensure:

“Sustainable, competitive, and efficient development of the urban environment by promoting and encouraging action to restore buildings and, where necessary, restore and update existing urban structures to ensure citizens’ right to an adequate quality of life and to decent and adequate housing.”

The objective set out in Article 3, entitled “Principles of sustainable urban and spatial development,” stipulates that “the common objective of all public policies related to land management, management, occupation, transfer and use is to use land resources in accordance with the principles of universal interest and sustainable development.” These policies “should promote the rational use of natural resources by coordinating the requirements of economy, employment, social cohesion, equal treatment and opportunities, human health and safety and environmental protection.”

Therefore, Trlsru defines sustainable development as “the high level and stable growth of goods and services production consistent with extensive social progress, environmental protection and prudent and effective use of natural resources,” which should not take precedence over any other development. Specify that these urban policies should be consistent with the principles of competitiveness, economic, social, and environmental sustainability, territorial cohesion, energy efficiency, and functional complexity.

This explains why legislators choose to define sustainable development within the scope of Article 3 and concludes that this has led to the transformation of the land paradigm, and land has changed from the operational basis of urban design to a basic environmental resource. “Urban design, a major participant with land as the goal, now plays an instrumental role. As the only object of urban planning, land plays a vital role in urban planning, but it is not a part of urban planning, but a part of environmental rights as basic environmental resources.

In its judgment of 20 December 2006 (RC 765/2004), the Supreme Court introduced the concept of sustainable development, which stated that sustainable development:

It was first announced at the Stockholm Conference that its purpose is to balance the maximum natural protection without giving up the maximum possible development and seek to protect natural resources without compromising the development necessary for orderly social and economic development, that is, to consolidate socially desirable, economically feasible and ecologically prudent development.

In order to promote the achievement of the proposed sustainable development goals, public policies should be combined in a functional way to use housing in a safe, healthy, barrier-free, high-quality, and integrated housing and urban environment, equipped to minimize pollutant emissions and the impact of greenhouse gases, optimize the consumption of water, energy and waste treatment, and integrate the use in line with its residential function into the urban structure. Promote economic and social vitality and restore and occupy vacant housing. The quality and function of donations. Mobility takes precedence over collective public transport and promotes walking and cycling^[10]. Therefore, the law clearly defines the various elements of sustainable development: social, economic, environmental, and cultural development.

Trlsru does not stay in this statement of principles, but many of its contents have been developed through the text of the declaration. We will focus on those related to urban land use, especially land reclamation and restoration actions. Article 20 (1) is particularly important in this regard. (a) emphasizing the need to finance urban renewal policies by limiting the possibility of transforming rural land into urbanized land, transforming it into “land needed to meet needs, prevent speculation and protect other parts of rural land from urbanization.” Paragraph (b) of the article also stipulates that land

use management shall comply with the principles of universal accessibility, equal treatment and opportunities for men and women, mobility, energy efficiency, water security, prevention of natural disasters and serious accidents, prevention and protection of pollution and limitation of its impact on health or the environment.

These principles are supported by the case law of the Supreme Court. If the plan provides for the transition from rural land to urbanized land, the land area exceeds the land area required to meet the needs of population growth according to the reasons contained in the same plan, they made judgments declaring them null and void, or at least repeal the provisions relating to the increase of land to be developed, such as the judgment of June 18, 2015 (RC 3436/2015), the judgment of June 24, 2015 (RC 3784/2013), or the judgment of September 27, 2018 (RC 2339/2017), the first time based on their legal basis 15.A. statement:

“National Law No. 8/2007 on land adopted by Royal Decree No. 2/2008 of 20 June 2007 and the current consolidated text accept the principle of sustainable urban and territorial development, which aims to transform the traditional development concept of promoting unlimited urban growth into a traditional development concept of controlling urban growth, emphasizing the reconstruction of existing cities in the face of new land changes, however, the premise is that a certain urbanization model cannot be imposed from national legislation.”

This is emphasized in Article 22 Trlsru, which provides for environmental assessment studies and reports on the monitoring of urban activities and their environmental and economic sustainability. The submission of the urban plan referred to in Article 22.1 to the environmental impact assessment is in line with the provisions of Law No. 21/2013 of 9 December on Environmental Assessment (hereinafter referred to as “environmental assessment”), and if it is not implemented or improperly implemented, the plan will be declared invalid. In this regard, it

can be seen, *inter alia*, that SSTS 20–02–2015 (RC 1012/2013) and 27–10–2015 (RC 2180/2014), which abolished the Marbella master plan for environmental assessment of the plan in accordance with Andalusian regulations (Environmental Impact Assessment), and the Supreme Court declared the plan invalid after verifying the difference between EIA and EAE because of the lack of mandatory environmental research.

In order to monitor urban planning and biennial preventive measures, Article 22^[11] requires that a report on the implementation of urban planning in the city, considering the impact on environmental and economic sustainability, be submitted regularly to collegiate government bodies (usually plenary meetings). On the premise of meeting the legislative requirements of environmental impact assessment, this monitoring document can produce the expected effect according to the provisions of environmental impact assessment legislation.

In the final analysis, as we pointed out in the previous lines, the objectives of sustainable development have been clearly determined in land legislation and widely recognized by special theories and case law. Therefore, we hope that the realization of these objectives will be easier. Similarly, Moreno Molina insists that once the principle of sustainable development is established in the sectoral law, it must be realized and implemented by the complex government public administration through programming and planning activities.

Since the achievement of these goals depends largely on the policy of merging cities, our research seems to focus on the tools provided by the law for urban planners so that they can restart, focusing on new urban planning, meeting housing needs, and creating a more friendly and humane urban structure when taking action on urbanized land, while rural land policy should focus on protecting their naturalness and promoting the development of their natural potential^[12].

Therefore, the next title will focus on the study of performance in the urban environment.

4. Urban environmental performance

Urban environmental actions can be divided into two categories: building restoration (Article 2.1 is related to Article 7.2 (b) Trlsru) and urban renewal and renewal (Article 2 is related to Article 7.1 Trlsru).

The former is defined as a project affecting the building, whose purpose is to maintain or generally intervene in the building, its facilities, or public space in order to correct the defects of building function, safety, and livability. This is a broad definition that includes both maintenance work, that is, maintenance work in the strict sense, and work that requires more in-depth action in the building to maintain its basic characteristics and thus the building itself. Even renovate buildings and replace them with new ones. This may include urban renewal and regeneration activities and cannot be classified as transformation activities, as described below. The national housing plan (ENP), approved by Royal Decree No. 106/2018 of 9 March, until the end of this year, provides assistance to the so-called “urban and rural rehabilitation and renewal” areas, which aims to fund the “joint implementation” of building rehabilitation and urbanization or redevelopment projects.

Urban renewal measures involving urban renewal and renewal include urbanization measures (Article 7.1 (a) (2)), *i.e.*, by transforming previously defined geographical areas, transforming or updating urban structures to create one or more plots suitable for construction, and donation measures (Article 7.1 (b)), *i.e.*, more conservative actions on urban land, as they are required to increase existing allocations, which leads to an increase in the constructability of the area or density, or a change in the use identified in the urban plan, with the aim of improving rather than transforming the city. We believe that nothing can stop urban renewal actions aimed at improving urban infrastructure (streets, squares, parks and gardens, etc.). Or existing facilities. However, these actions are not con-

trolled by Trlsru and are not funded by the existing ENP.

If these regeneration and renewal measures also involve environmental, social, and economic measures, any of them can be comprehensive. We agree with Geoffrey Fangte's criticism that national legislators should have a greater impact on these comprehensive actions from a holistic perspective and deal with actions on urban land from an urban, environmental, social, and economic perspective. Therefore, this is the only way, comprehensive solutions can solve not only urbanization problems but also global problems in most cases. Therefore, pure urbanization solutions cannot be remedied^[13].

Case law attempts to define each other's proceedings in the SSTS of 20 July 2017. On October 30, 2018 (RC 6090/2017) and the most recent judgment 14-02-2020 (RC 6020/2017), the difference between urbanization and donation action is defined, stating that:

“That is, the level of action and its corresponding consequences do not depend on the detail or extent of the land to be treated, but on the extent or extent of the treatment of a particular land, which may include the reform or renewal of urbanization, depending on its intention, or only the improvement of urbanization through increased funding within a commensurate framework, without transformation or renewal; reform or renewal (urbanization action) is “urbanization”—it has a qualitative advantage—while increasing funding (donation action) is “improving cities”, which has a considerable number of components.

The case law we have just mentioned refers the decision to intervene in urban land to the urban planning department, but this decision must be fully justified because it points out that “planners may decide to take action in areas that are already cities in order to implement urban renewal, rehabilitation or reconstruction in these areas, but this will require greater motivation, this occurs in the memory of the plan itself, in the public interest, as long as these

actions meet the actual needs, so as to prevent the willingness to change based solely on the opportunity criteria from affecting the obligations of owners who have helped to consolidate their homes or premises^[14].”

Therefore, the actions taken by the city to update, transform, or improve its facilities first need to make normative provisions in urban planning to meet the needs of urban planning, so as to enable the owners of buildings, houses, etc. To participate in the management of the plan and have the obligation to contribute to its costs, regardless of the previous nature of the land.

This participation in the management of land or building owners referred to in Article 9 (3) and (4) of Trlsru must be supplemented by the definition of ordinary citizens' participation in renewal and restoration measures, because, as confirmed by case law, a city is “the design, use and equipment of residential space and the prospect of its development, expansion or expansion, serve the general interests objectively; there is no interest of one or more owners; not even the interests of municipal companies themselves [STS 26-07-2006 (RC 2393/2003), etc.].

4.1. Urban environmental performance rules

STC 143/2017 significantly amended article 24 Trlsru, which was declared unconstitutional on the grounds of the competence of articles 2 and 3. Therefore, it is simplified to the numbers 1, 4, 5, and 6.

However, as we have just said, this provision in the still valid part contains a set of common rules on action in the urban environment, whether it is on construction, urbanization, or both. These rules need to be carefully studied, and even the most appropriate part needs to be supplemented by the rules set out in Article 1. In addition, ACC has provided for this issue, or that ACC has provided for it^[15].

This article recalls the management contained in Article 96 of Royal Decree No. 1/1992 of 26

June 1992, which adopted the consolidated text of the Land System and Management Act^[16]. In order to facilitate action in the urban environment, it provides for the possibility that there may be no provision for its re-implementation in urban planning. In this case, it must start with planning amendments. To this end, national legislators, in the absence of urban planning capacity, refer to urban legislation to determine the contents and procedures of these amendments. In addition, such actions are allowed to be approved through instruments other than urban planning, provided that this is provided for in urban legislation.

This is also unknown in our urban law because it traditionally uses general or special plans for urban land management, such as Law No. 7/2002 of 17 December on urban planning in Andalusia (LUA), whose objectives include taking measures to protect, improve, or protect the urban environment, even in the absence of a general plan in advance [Article 14 (2) (b)]^[17].

Trlsru stipulates that regardless of the urban planning tool used, an economic sustainability report must be submitted to ensure the economic feasibility of the action and that the action will not change the municipal budget balance referred to in Article 22, paragraph 5. So as to improve the value of these reports, As the planned economic and financial study has become an official document, it has no contribution to the economic feasibility study itself.

If there is no need to modify the plan, usually because the plan has stipulated specific actions for the urban environment, it is necessary to approve the scope of “joint action” in any case. According to the law, this may be continued or disagreed with. In this case, we will continue to carry out the systematic action referred to in the urban legislation, or the action divided by units. In the future, we will refer to the urban legislation.

In addition, the national legislature has also stipulated auxiliary measures (Article 24(1)), which we believe are of great significance in improving

the accessibility or energy utilization of some buildings in urban areas. In both cases, the scope of action or separate action shall be determined in accordance with the recommendations of any party listed in Article 8 Trlsru^[18].

Whether it is systematic litigation or auxiliary litigation, it must adopt an administrative agreement defining the scope of litigation. This is an administrative act. Its approval procedure needs to notify the parties and pass a public information procedure for future approval. Indeed, as we said, Article 2 under consideration has been declared null and void, but the need for such notification and publication is undoubtedly made in accordance with Article 2.25 Trlsru, and the specific projections contained in urban legislation. Similarly, in accordance with the principle of transparency, all persons affected by the definition of the scope of action participate in the system of equal distribution of benefits and burdens (Article 14(c)), although we know that participation in action is an unavoidable obligation for all these persons (Article 17(2))^[19].

The articles we are discussing in the following issues set out a series of rules for repairing existing old buildings on urban land. The oldest may be those made up of the elderly and, therefore, those with a greater degree of dependence may be the most economically disadvantaged, so we believe that this is an important step towards urban and social sustainability. Therefore, Article 4 above allows the occupation of public or free space for the installation of elevators or other components that ensure universal accessibility. This occupancy permit applies to private items such as lobbies, lounges, decks, cantilevers, and supports on the ground, underground, or in flight, provided that it is the only feasible technical or economic solution. As a result, the law sacrifices public funding and sacrifices private owners who may suffer some housing losses in order to obtain more accessible and mobile housing.

Obviously, this sacrifice in privately owned housing must be compensated. If it cannot be compensated, it must be compensated through the equal

distribution mechanism, which is purchased by the beneficiaries of the occupied part of the housing through the expropriation mechanism or through an agreement.

These same public or private space occupancy permit standards specify the space required to carry out works that reduce the building's heating or cooling energy demand by at least 30% through facilities designed to install insulated or ventilated exterior walls, bioclimatic devices, renewable energy systems, or reduce water use. In this case, the act explicitly encourages the improvement of the quality of life by reducing the pollution caused by the city and affects the factors that contribute the most to the city, even if it means the temporary sacrifice of public space. In this case, if the sacrifice occurs for private goods and is final, it must usually be compensated through the expropriation mechanism. We are considering, for example, installing solar panels on private terraces.

These projections are supplemented by a special rule that requires urban planning to develop rules and standards to ensure that these areas do not calculate the constructability limits or the minimum distance from the boundary specified in the urban planning.

The same rule applies to projects that can reduce the annual energy demand of buildings by at least 30%, provided that they include any of the actions listed in paragraph 5 of this article.

Finally, action is also envisaged for buildings of cultural interest, which is limited to authorizing "innovative measures" to address accessibility or energy conservation.

Loua provides for implementation through integrated management areas (AGI) in its articles 144 to 147. Agi may be interested in implementing actions in the urban environment, especially in the so-called integrated actions (Article 2.1 Trlsru). As mentioned earlier, urban and construction activities are combined with other social, environmental or economic activities. Well, the establishment of

these areas can be realized through the process of urban planning or delimitation of executive units. Therefore, Lua's prediction is consistent with the prediction we just saw from Trlsru.

The division means "coordinating and integrating the actions of Andalusian administrations and municipalities and, where appropriate, other administrations having an impact on the objectives in these areas."

Article 145 provides for the validity of declarations, starting with the cooperation of the relevant authorities, authorizing the establishment of regional management consortia, charging public prices, and using and managing the assets provided or attached. Finally, the right to visit and recover all transmissions generated in the area within six years^[20].

Article 147 also authorizes the division of the area into one or more implementation units, the application of any planning implementation system specified in the land use, forestry, and forestry law to each implementation unit, or the implementation of conventional projects.

This provision must be complemented by the provisions of the above-mentioned existing ENP, Articles 47 to 54 of which provide for assistance to urban renewal and renewal areas (ARU), which aims to take joint action to restore buildings and urbanization, or redevelop public spaces or even new buildings to replace other demolished buildings, including actions in housing infrastructure and shantytowns (Article 47). In order to qualify Aru, the plan stipulates a condition that 70% of the constructability of Aru should be applied to housing. This requirement excludes actions affecting insufficient housing or shantytowns. I think this provision is incomplete because what happens in actions involving housing and insufficient housing^[21]?

It can be pointed out that these actions that can easily match the specified are not comprehensive actions within the meaning of Article 2(1) of Trlsru. Although, in my opinion, nothing can prevent the

agreement between the autonomous authorities and the municipal government from supplementing the actions funded by age, in any case, compared with other actions of a social nature, these comprehensive actions start from age.

Finally, back to Trlsru, we must remember that any action in the urban environment must ensure its economic feasibility through the preparation of feasibility reports, which we mentioned in the previous pages. This memory must be accompanied by a modification of the plan to make action possible, or, if the plan does not need to be modified, by an administrative agreement defining the action.

With regard to the content of the report, it must be emphasized that there is a repeated need to specify that the cost of action against all people in the area should not exceed the maintenance obligation. In this regard, see the last paragraph of Article 22(5)(a) and the last paragraph of Article 22(5)(c) above. The report should include not only costs, but also the increase in constructability included in the action that may make the action more cost-effective, any potential contribution of the public administration, if any, and any investment by third parties interested in the action, or ultimately the commitment of energy service providers to fund some of the actions that affect their services^[21].

4.2. Legal system of urban environmental litigation

The rights of buildings, buildings, and/or land owners on urbanized land and, therefore, the rights that may be affected by urban environmental actions are set out in Article 14, which provides for the right to urbanize or, more specifically, to build on qualified units, i.e., on plots defined in Article 26(1). (b) Trlsru, and participate in the implementation of reform, renewal, or donation plans under the condition of fair distribution of profits and burdens.

The participation in the equal distribution of benefits and burdens reiterated in Article 9(6) Trlsru should be understood as involving reconstruction or renovation, but not the redistribution

of buildings, because the application of this technology is very complex, which means that each owner will bear the cost of the action in proportion to its ownership and will obtain the construction area. The principle of equal distribution is the basic principle of China's urban law. Legislators hope to be strengthened in their actions in the urban environment. Article 23 Trlsru stipulates the effect of ratifying the instrument of equal distribution (the draft redistribution is usually designated by the municipal legislation), but does not specify any particularity that should be mentioned at present.

Article 14(c) provides for another option of equal distribution. We believe that this option is retained for litigation where it is impossible to replace the old property with new property, but the difference from "traditional" equal distribution seems to be that the former replaces old property with new property, while the other option, this substitution does not exist. In other words, the old ownership is retained only to "distribute the costs and profits arising from implementation among all parties concerned, including public assistance and all assistance that may generate some kind of income related to the transaction^[22]".

Paragraph (d) of the same article provides for the last right, which is more like an obligation to provide for the automatic actual and immediate impact of an administrative decision allowing the commencement of proceedings to cover the costs of urbanization of farms falling within the scope of the proceedings.

As for the fees stipulated in Article 17, they are the other side of the right currency we mentioned. The most unique thing in the urban environment is the reservation, which we will discuss under the next heading, so we won't stop now.

Paragraph 5 of the same article stipulates that, in addition to the obligations under the autonomous legislation, it should also include: (a) the owner and holder of the right to use the private property according to the proportion of private property stipulated in the contract. (b) owner communities and

housing cooperatives, involving common components of buildings or real estate complexes. (c) Public administration takes into account the characteristics of urbanization, on the premise that owners are not obliged to bear their costs. Therefore, it clearly distinguishes the responsibility of each subject to the object from which its “holder” belongs^[23].

Initiatives to propose arrangements for processing operations may be initiated by the administration, its subsidiary bodies, or its owners. In addition, actions in the urban environment can be carried out by owners’ communities and community groups, cooperatives, buildings, and owners of urban real estate. In this regard, the law is redundant, as the owners have mentioned when dealing with actions. The secured party and any company representing any of the above parties may also take the initiative. Obviously, the possibility of taking action on urban land is related to the obligations arising from the category of subject rights we have just mentioned. Therefore, for example, initiatives by owner communities to promote performance management can only be envisaged in actions that affect common elements of the building, even when the building requires new common elements (e.g., ramps, and elevators occupying public space)^[24].

With regard to participation (Article 9(4)), or if desired, the possibility of pilot action, of course, is the power of the public administration, which can use any form of direct or indirect management that is, it can participate, for example, through the concessionaire or urban development agent (or reformer).

If you don’t execute the project directly, and consider a large part of Article 9.3 according to the above judgment of the constitutional court, when seeking help from a third party, the administrative authority must select a third party after the bidding. The bidding procedure is governed by the public procurement rules. It can also incorporate its own media into the company, or finally entrust it to a previously established consortium or a joint venture

in which the administrative authority must hold a majority stake. If it is an urban transformation action, the means specified in the urban planning regulations can be used to implement the plan.

Trlsru recognizes that building owners, owner communities, cooperatives and any companies generally involved in activities and management have the right to participate in these activities. We emphasize that the participation of these individuals or entities is related to, or must be related to, the subject of the Trlsru referred to in Article 17(5). Such participation may lead to the management of the project. They can also cooperate with other natural or legal persons. Legislators seem to be considering compensating urbanization (or restoration) enterprises in the management system.

Article 18 sets out the obligations of the promoters of activities and details the obligations of the promoters of urban transformation, donation, and construction activities. In the first case, the obligations of the developer are typical of these processes, namely, the transfer of land to the land administration for local or general donations, the provision of land, urban development for inclusion in public land heritage, the payment and, where appropriate, the implementation of all urbanization projects, and the connecting infrastructure specified in the plan, transfer the works and infrastructure implemented as part of urbanization to the administrative authorities, ensure the land use right and return right of legal residents, and finally compensate the right holders of demolished buildings and buildings and works, facilities, plantations and seeds that cannot be retained.

In donation activities, the above obligations shall be reduced according to the increase of “weighted average” buildings in the designated area^[25].

In construction litigation, our obligations are limited to the resettlement right and restitution right of the legal occupier expelled due to the litigation, as well as the right to compensation for the owners of the demolished buildings and the works and fa-

cilities that cannot be retained. We omit the reference to plantations and seed plantations because the construction litigation is unimaginable.

In order to facilitate the financing of planning activities, the act recognizes that any of the above-mentioned individuals and entities carrying out activities in an urban environment have sufficient legal capacity to carry out any type of financial transaction, including credit, to enable them to fulfill their conservation obligations and participate in redevelopment, regeneration, and renewal activities (Article 9.5(a)). This is the same number emphasized at point (H)^[26].

4.3. Architectural rehabilitation

Construction activities can substitute for new buildings, existing buildings, or building restoration. Its purpose is to make houses and buildings have the functional, safe, and habitable conditions specified^[27].

Under this heading, we will focus on building rehabilitation and energy improvement actions, which we believe is a core element of this global transformation, that is, urban residents focus on protection, rehabilitation, regeneration, and urban renewal policies. In short, this transformation takes sustainability as its guiding principle.

The starting point of these actions is that the law stipulates that the owner has the obligation to maintain their property in safe, healthy, generally accessible, and decorative legal conditions (Article 15.1(b)), and to carry out additional works for “tourism or cultural reasons, or to improve the quality or sustainability of the urban environment” (Article 15.1(c)), although the latter appears to require the administration to issue an injunction in advance. Iglesias^[28] referred to the first responsibility as general responsibility for protection and the second as additional protection work, linking only 50% of the cost limit to general responsibility. In our view, although this interpretation is thought-provoking, it is difficult to be consistent with the existing comprehensive text, because Article 2 only provides for the

limitation of the obligation to protect at the expense of the owner. If this limit is exceeded and limit No. 3 is quantified as half of the present value of the new building, the additional cost shall be borne by management, provided that the project contributes to the improvement of general interest.

This provision is traditional in our urban planning law. It provides the most relaxed owners with the benefit of fulfilling their obligations, because those who regularly maintain may always be within the scope of Article 15, while those who do not maintain, for whatever reason, will find that one day, the repair cost may exceed 50%. We believe that the obligation to retain is not only in the interests of all but also in the general interest. The obligation to retain is limited according to the economic capacity of all, so if he lacks the resources needed to properly maintain his housing, he should be able to obtain social and economic support measures. In other cases, the obligation to retain should not be limited.

This retention obligation can be imposed on the owner through an enforcement order, which determines the “direct and immediate actual condition” of the real estate in performing its obligations under the enforcement order. If the implementation is not effective, it is up to the administration to take supplementary action.

Article 4, which we are studying, stipulates that if the owner does not comply with the enforcement order and the management is auxiliary, the maximum limit can be increased to 75% of the replacement cost of the building, provided that there are provisions in the autonomous legislation. This seems to provide legislators with an opportunity to “punish” those who do not comply with administrative requirements.

With regard to the obligation to protect, case law maintains that “this is a clear manifestation of the social function of urban property rights (Article 33(2) of the EC), because safety and health reasons, and even public decoration, are unquestionable social values”, and that “the construction administrative police are not limited to the revocation and oc-

cupation of urban permits required for buildings, but are extended over time. After the completion of the works in accordance with the unexpired permit and urban planning, the requirements for the appropriate protection obligation of the building are adopted (STS 1–07–2002 (RC 7088/1998)). Similarly, STS of 26 June 2007 (RC 9002/2003).

Conversely, the Madrid TSJ judgment of 6 February 2019 (RA 1118/2017) reviewed the “normal” protection obligation of the owner, so the part beyond this obligation is not enforceable and pointed out that:

“Protection works for the improvement or transformation of external walls or spaces visible on public roads for tourism or aesthetic interests (Article 15.1(c) of the current consolidated text of 2015), which also involves the obligations of the owner, but the difference is that any works beyond the normal conditions for the maintenance of public safety, health and decoration, namely: the normal maintenance of the building is not the maintenance obligation of the owner. Therefore, due to the above tourism and aesthetic reasons, the relevant expenses of all works exceeding the normal maintenance obligation and seeking improvement in the general interest shall be paid by the authority^[29].”

Second, the legal limit of the obligation to protect under the autonomy law is half the value of new buildings with similar characteristics. Darusia^[30] headquarters, 20 April 2012 (RA 566/2011), analyzed the limitation of the obligation to protect, emphasizing that this limitation is half the present value of the building. Another example is the Granada Court decision of 27 September 2018 (RA 1032/2016), which agreed with the judgment on the quantitative limitation of the normal obligation to protect.

If the work exceeds the value of the maintenance obligation, it exceeds this value, and as mentioned earlier, if the work is in the public interest, the municipality is entitled to bear these costs, as it is usually the municipality that executes the order (No. 5).

One might ask whether, when referring to “general interests”, the act limits the possibility of administrative intervention to protected real estate, even those without tourism interests, which is the view of Barrero Gonzalez, but it limits the possibility of administrative intervention to real estate listed under Article 157(3).(b).(a) Lua cannot be demolished, even if they are declared ruins. In our opinion, this is a view based on market urban design. The public interest advocates the principle of sustainable urban development, and the principle of sustainable urban development is protection and restoration, so it is Article 3.3.(b) It requires public authorities to promote the restoration and occupation of abandoned housing or to announce in point 4 the link between housing use and the right to decent housing.

Article 17.3 Trlsru stipulates that for buildings, the obligation to protect means meeting the basic building requirements specified in Article 3 of Law No. 38/1999 of 5 November on building management (LOE) and upgrading their facilities to legal standards that can be enforced at any time.

The upgrading of facilities can achieve the same important performance as the building and its occupants, such as fire fighting facilities (ICC) or energy facilities (heating and cooling). According to this idea, firefighting facilities will need to be updated regularly according to the best available technology (BAT). Similarly, action will be taken on power generation facilities that seriously affect urban pollution. Menén Dez Rexach put forward this idea, which he called the “progress clause”, and incorporated existing technological improvements into old buildings. Although I agree with Iglesias Gonzalez that it can be seen from the reading of the interpretative declaration of l3r that l3r is not retroactive, leaving a decision on whether there is an obligation to incorporate technological innovation into sectoral legislation.

Finally, before completing the title of measures to protect buildings on urban land, reference should be made to the promotion activities carried

out by public authorities through the housing plan, namely ENP, which stipulates that protection measures related to infrastructure, structures, and facilities are subsidy measures (Article 43(1))^[31], suggestions on improving use security and accessibility. In addition, the plan (Article 36) supports measures to improve energy efficiency through actions in heating, refrigeration, sanitary hot water production, etc. We know that the housing plan does not add any protection obligations because it aims to promote the implementation of certain actions through economic assistance plans. This is a standard running in the classic administrative incentive activities.

At the end of this title, we cannot fail to mention the “building assessment report” stipulated in Article 29 Trlsru. As we know from the above report, report No. 1 applies only to reports No. 2 to No. 6, because STC No. 143/2017 declared these reports unconstitutional and therefore invalid, because the state has no ability to supervise this matter. However, as we have just said, our understanding is that the report is or may be an important part of helping to protect buildings, depending on the provisions of the Administrative Committee on coordination or the City Council on the report, because the law only allows the competent authorities to require the owners of residential buildings to comply with the report.

In summary, we have studied the obligation to protect. As we believe, the fundamental problem with this obligation is that its provisions have so far been insufficient to achieve its goal, that is, the survival of existing buildings. Because it has traditionally run counter to the consistent will of owners to declare their ruins, demolish them, build new buildings, and terminate existing leases, the current urban leasing law (Lau) has a low degree of protection for tenants, which may bring more benefits to building protection. Another enemy of protection is urban planning, because if urban planning gives new buildings greater urban utilization (greater constructability), then new buildings introduce an improper incentive to encourage the renewal of

these buildings, which is not conducive to their protection.

4.4. Land use right and return

In litigation at the city level, it is often encountered that the house is legally occupied by someone other than the owner, which means that the occupier is the creditor of the land use right and restitution right, which means that the expression of a social right originates from the Urban Leasing Act of 1964, which expands this right. Due to the current urban leasing law, it continues to exist on the basis of surplus. In this regard, Article 4 of the 1992 Land Act has provided for the right to resettlement and restitution in a manner similar to its current provisions in Trlsru.

Land use rights refer to the provision of new housing for the legal occupiers of real estate constituting their habitual residence, provided that these real estate obviously belong to the scope of urban activities. This is a nontransferable personal right, with the exception of forced heirs or surviving spouses, according to Article 19, paragraph 3, as long as one or the other proves that the house is used as their habitual residence^[32].

No. 1 and No. 2 stipulate the exercise of the right of referral in systematic behavior, and No. 1 and No. 2 stipulate the right of referral and check-out in auxiliary behavior.

Therefore, points 1 (a) and (b) stipulate that the collection authority (a) or the action initiator (b) must provide housing to legal residents with the current sales or rental conditions and an appropriate area of protective housing within the area limit of protective housing. The delivery of alternative housing shall be carried out under the same conditions as those enjoyed by the leaseholder, which is equivalent to the payment of a reasonable price or compensation.

The legal occupier can choose to obtain a fair and reasonable price in cash and waive his real estate rights specified in Trlsru^[33]. Therefore, system-

atic action does not provide for the right to return.

The provisions on land use rights and restitution rights are recognized only when expropriation is not applicable, in which case the provisions we saw in the previous paragraph will apply. Article 19(2) stipulates that the owner of the building has the obligation to provide temporary accommodation for the affected persons who legally occupy the real estate as housing and to facilitate their return during the remaining term of the contract.

Our court recognizes that any legal occupier has this right. Therefore, the judgment of the TSJ in Madrid on 8 February 8, 2017 (RA 988/2016) states:

“[...] It imposes a real obligation to make it urban in nature because in order to produce real property rights, the occupier must be required to have legal status, that is, he or she has the real property right of the evicted house, that is, he or she owns, uses or at least enjoys the personal right, that is, the lessee. Even unstable people can be recognized as legal possessors, which is the possessor with the consent of the owner.”

Similarly, the judgment of the same court of 2 February 2006 (RA 393/2004); 16.03. 2016 (RA 527/2015; 20–04–2016 (RA 609/2015), etc.

Resettlement must be carried out in housing within the same area of action or, where impossible, in housing closest to the area, and where it is not feasible, they are entitled to the same economic rights as the right to resettlement (No. 5). The area of such housing should meet the needs of the owner. If he is disabled, according to his needs, I understand that the “appropriate” area should be equal to the area he/she has always enjoyed.

At the end of the operation, the real estate owner shall facilitate the return of a house with an area of not less than 50% of the previous housing area, provided that the housing area is at least 90 square meters or not less than the previous housing area. If this area is not reached, the housing has similar characteristics and is located on or around

the same site where the building was demolished. Obviously, as Lopez^[34] said, a return must be a house that can be physically and legally occupied.

The rule we are discussing sets out a series of procedural rules in No. 4, which aim to ensure the participation of legal residents in the establishment of actions on urban land, thus providing that: (a) The administrative authority has the obligation to identify and notify them and provide them with a hearing procedure consistent with the public information procedure, if this is mandatory, and we already know it is mandatory. (b) In this process, the occupier can prove his ownership and ask for recognition or waiver of this right. (c) When necessary, the administrative authority shall publish the list of persons entitled to resettlement and notify the relevant personnel. (d) The law authorizes others to prove legal requirements after these procedures. As López^[35–39] insists, if the owner believes that the relationship approved by management includes people who do not meet the statutory requirements, or if any of them believes that their rights are not recognized or not recognized by legal terms, the owner can object to the list approved by management.

5. Conclusions

In short, we should remember where we started. The right of a city is the right of a citizen. If it is an emerging right, it advocates that citizens are the protagonists of their city and shape it according to their interests and general interests. Urban planning legislation has traditionally encouraged citizens to participate in the process of adopting planning and management instruments, but this is a kind of participation that does more harm than good. As stated in the constitution, the new role of citizens must be real and effective, and the instruments that formulate these instruments must develop in this direction.

This urban right is in line with the principles of sustainable urban development, including extensive ecological land legislation. In fact, after clearly confirming this principle, Trlsru reiterated the need

to guide public policies to make rational use of natural resources, including soil, by coordinating the requirements of the economy, employment, social cohesion, equal treatment and opportunity, human health and safety and environmental protection, as done in the constitution. More specifically, this means that we need to abandon the expansionary urban design of the 19th century and most of the 20th century and re-examine the city. This is no longer the problem of creating new cities, but the problem of improving existing cities^[40].

In this seemingly irreversible process, although it has not yet faced long-term economic expansion, it must have appropriate legal instruments.

Trlsru regards urban activities as the basic tool of this new urban practice. It is necessary to protect existing buildings and restore them by improving their accessibility, which is essential in an aging society to improve the energy efficiency required to mitigate climate change. The city is the world's largest consumer of natural resources and an emitter of greenhouse gases.

However, some specific instruments conducive to urban restoration and protection are designed by legislators. Their purpose is to treat buildings and housing as easily replaceable assets. If they are not protected, they will be destroyed (the obligation to protect ends at the beginning of declaring economic destruction or just destruction). Therefore, we believe that this limits the obligation to protect to a narrow scope. This obligation should be limited to those who do not have the financial resources to fulfill it, in which case the public authorities should do their best to prevent citizens from fulfilling this obligation.

In addition to these interventions, the city needs other measures aimed at promoting the renewal and regeneration of urban structure, especially in the most degraded areas of the city, where physical degradation often occurs simultaneously with economic poverty and social destruction. Therefore, it is criticized that the law only allows comprehensive interventions, interventions that

combine urban, economic and social development should be vigorously strengthened. In addition to urban renewal, interventions should also aim to promote the stability of their community residents and promote social diversification to make slums more inclusive and open.

In addition to these actions in the suburbs or elsewhere, we must also take action in the centers of our cities to provide them with new facilities and services and promote their refinancing nature in order to prevent them from being abandoned, thereby gentrifying the city centers. And those who attach importance to the protection of architectural heritage, because we have the obligation to bequeath the city we get from our parents to our children. It is very interesting to read the judgment of TS on January 26 this year (RC 8090/2019)^[41-43].

If the actions mentioned have one thing in common, it is that they lack economic attraction. In this regard, the legal system stipulated in Trlsru is hardly monitored, which largely replicates the outline of planning and implementation procedures for developable land. We believe that in the future, in most of the actions listed, the ability of management will not be strong. Equal distribution also does not seem to be the most appropriate mechanism for implementing action in an urban environment, so legislators seem right to envisage an alternative system.

Conflict of interest

The author declares no conflict of interest.

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