

PAPER • OPEN ACCESS

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To cite this article: Ana Virtudes 2019 *IOP Conf. Ser.: Mater. Sci. Eng.* **471** 082032

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Urban Rehabilitation: A Glimpse from the Spatial Planning Law

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Abstract. The urbanized policy of the last years in Portugal has been based on the construction of urban expansion areas, as much for industrial ends as for residential ends. It is estimated that the areas available for construction when added to the consolidated urban areas can house a population of 30 million inhabitants, while the Portuguese population is around 10 million. Many of these new urban areas are much bigger than it is necessary with problems in terms of waste of infrastructures, creating urban voids or discontinuity. Recently, there have arisen new legal diplomas designed to encourage an urbanized praxis that goes against the current trend and incentives the urban rehabilitation actions. These diplomas define one policy of urban rehabilitation in articulation with the municipal plans, namely with the contents of the detailed local plans (the most detailed of the Portuguese planning system). In this context, this article aims to present a reflection about the new challenges to the urban rehabilitation as an agent of urban design, the figure of detailed local plan as the first instrument of urbanized praxis in urban spaces which should be hackneyed in its utilization and, the process of construction of the city based on urban rehabilitation instead of urban expansion.

1. Introduction

This structure of this paper is organized in the following subjects: Step 1. Background: urban rehabilitation incentives and policies; Step 2. The changing of paradigm: from the urban expansion areas to the urban rehabilitation *praxis*; Step 3. Principles, policies and instruments of urban rehabilitation; Step 4. From the urban rehabilitation in theory to the *praxis* at spatial planning system.

2. The evolution of urban rehabilitation

2.1 Step 1 - Background: urban rehabilitation incentives and policies

The recent changes to the decree law of Instruments of Town Planning in Portugal confirms the tendency shown in 1998 in the General Law of the Town Planning Policy which explicitly appealed to the contention of urban limits.

Since then, few are the signs in the municipal plans which have evidenced the keeping of or the way in the sense of response to this appeal.

On the one hand, the upload versions of municipal director plans (from the 1990's), which define the urban limits where the urbanization is programmed, are slow and on the other hand, few are the detailed local plans with rules of carrying out of urbanization (the urban design) which minor the inequalities in terms of construction and urbanization between the land owners.



In terms of the urbanization plan, it can be said that this plan takes a difficult stance between the urban design of the detailed local plan defining the carrying out of the urbanization and the urbanization by means of projects of an architectural nature and of engineering and the Municipal Master Plan with the general parameters of construction and urbanization.

2.2 Step 2 - The changing of paradigm: from the urban expansion areas to the urban rehabilitation praxis

Seeing that the General Law of the Town Planning Policy remains without response, all the most recent decree law of planning call for the shrinking of the urban perimeters. This imposition is carried out by performing in various following areas:

- In terms of the land uses, with the extinction of spaces for urbanization, the only ones which are not being urbanized, and where this task has not been programmed within them should be able to be transformed into urban spaces. This production of urban spaces has been running with no urban design for the city, but by single private acts of urbanization, without taking into account the city as a whole;
- In terms of detailed local plans, with the different types of these plans reinforced in the urban spaces already existent and consolidated.

Whether it be by actions of urban rehabilitation or whether it be objects of actions to safeguard the cultural heritage in addition to being able to have as an object the rural spaces this being the only detailed local plan to the exterior of the urban perimeters.

Concluding, spaces to urbanize were made extinct (in 1999 with the decree law nr. 380/99) and; more recently (with the decree law nr. 46/2009) the types of detailed local plans for the urban expansion areas also became extinct. Two signals of change of paradigm from the urban expansion policies to the urban rehabilitation actions.

2.3 Step 3 - Principles, policies and instruments of urban rehabilitation

Reinforcing the necessity of heading towards a path suggesting the shrinkage of the urban perimeters, two new fronts of combat of areas of urban expansion have been created.

These new fronts have limited every possibility of elaborating detailed local plans in urban areas, within the urban perimeters confined to spaces which have been built and urbanized:

- The Regime of Urban Rehabilitation (the decree law nr. 307/2009 of 23 October) [1] which in practice regulates the content of a new figure of detailed local plan: the urban rehabilitation plan;
- The Regime of Safeguarding Cultural Heritage (the decree law nr. 309/2009 [2] also of 23 October) which regulates the content of a new figure of detailed local plan: the safeguarding cultural heritage plan.

3. The urban rehabilitation principles: a glimpse from the law

3.1 The Regime of Urban Rehabilitation

The decree law nr. 307/2009 of 23 October refers to the Regime of Urban Rehabilitation in Portugal. In practical terms, it regulates the contents of a new figure of the spatial planning system, which is the detailed local plan for urban rehabilitation purposes. It states that urban rehabilitation is today “an indispensable component in the city politics” (in decree law nr. 307/2009) and of rehabilitation, establishing two modalities for which the same can be performed: a simple urban rehabilitation of responsibility and expenses being on the owners and a systematic urban rehabilitation defined in the head office if detailed urban plan of urban rehabilitation.

The decree law nr. 307/2009 explains the principles of this regime as an instrument of urban politics such as:

- Principle of responsibility (in a private style urban rehabilitation, at the expense of the owners);
- Principle of subsidized (of an urban rehabilitation which is recognized to be of general interest which financed by the market functions and not by public funds, in which the unilateral solutions should be the last ratio);
- Principle of inter generation solidarity (which transfers the financial bill to the following generation);
- Principle of sustainability (financial, sociocultural and environmental, in which each of the parties contributes with their resources towards the urban rehabilitation in a process of what amounts to self-financing);
- Principle of integration and co-ordination;
- Principle of contracting (as a form of streamlining the executions of the operations of urban rehabilitation);
- Principle of the protecting of what exists;
- Principle of a just consideration and of equality.

In the urban rehabilitation plan, there is a task of identifying the necessities of rehabilitation, modernization or demolition of buildings, urban infra-structures, equipment and green spaces of collective utility.

3.2 The Regime of Safeguarding of Cultural Heritage

The Regime of Safeguarding of Cultural Heritage was created based on a new figure of the Portuguese spatial planning system, which is the Detailed Local Plan for Safeguarding of Cultural Heritage. With this figure, there is a reference to an intent to make compatible the protection of cultural heritage and the spatial planning purposes. These are understood to be fixed assets, fixed assets currently being classified and the protection zones; “as the organization of land and sustainable development”, that is, with the content of the detailed plan of safeguard cultural heritage.

This content should focus on relevant cultural interest, in order to fixed asset of the following aspects:

- history;
- paleontology;
- architectural;
- artistic;
- ethnographic;
- scientific;
- social;
- industrial;
- technical.

Regarding the protection zones, it is predicted that they can be delimited in the short term by means of a provisional special zone of protection and by means of a type of zone or gradient which includes namely the ring of the general zone of protection, the 50 meters taken from the external limits of the fixed asset.

The ring of the special provisional protection zone, which will be able to include *non aedificandi* zones; the ring of the zone of sensibility with a graduation of the imposed restrictions. These are unequivocally signs of policies which are aimed at the rehabilitation of consolidated areas to the detriment of new areas of urban expansion.

3.3 The Portuguese spatial planning system framework

The planning policy of the last years in Portugal has been based on the construction of urban expansion areas, as much for industrial ends as for residential ends.

It is estimated that the areas available for construction when added to the consolidated urban areas can house a population of 30 million inhabitants, while the Portuguese population is around 10 million.

Many of these new urban areas are much bigger than it is necessary with problems in terms of waste of infrastructures, creating urban voids or discontinuity.

Recently, there have arisen new legal diplomas designed to encourage a planning praxis that goes against the current trend and incentives the urban rehabilitation actions. There are unequivocally signs of policies which are aimed at the rehabilitation of consolidated areas and cultural heritage to the detriment of new areas of urban expansion policies. These diplomas define one policy of urban rehabilitation in articulation with the municipal plans, namely with the contents of the detailed local plans (the most detailed of the Portuguese planning system).

Nowadays, the Portuguese spatial planning system comprises two figures at the Municipal level, focused on the urban rehabilitation and the safeguarding of cultural heritage. For the first time these tasks are part of the spatial planning realm (Figure 1).

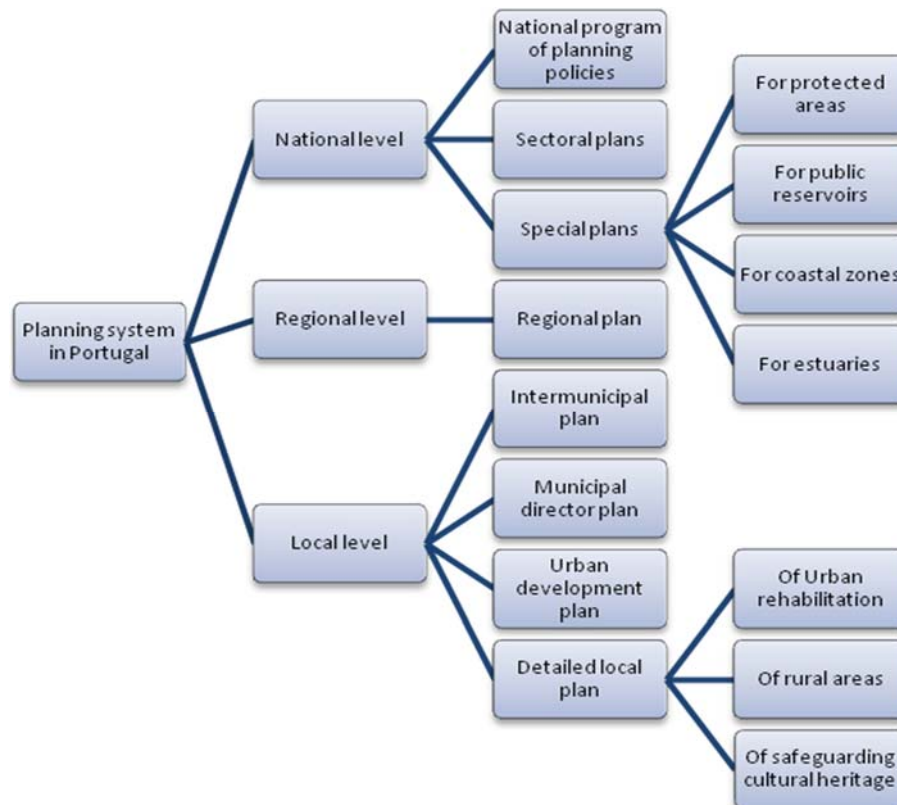


Figure 1. Portuguese spatial planning system comprising two figures regarding urban rehabilitation and safeguarding cultural heritage.

4. Step 4. From the urban rehabilitation in theory to that praxis at spatial planning system

Many questions are arising regarding the new policies of urban rehabilitation in Portugal, such as the following:

In a time of economic and financial crisis, how will the owners react to the suggestion of rehabilitation of their assets?

What are the challenges which arise to the assets to be rehabilitated placed for sale by a “forced sale” one of the incentives to the urban rehabilitation, at a time of stagnation of the real estate market?

The forced sale is understood as a social property function applied when the owner does not keep his obligations given by the process of urban rehabilitation, [3-5].

How will the local authorities resist the pressure, that is, incentives to rehabilitate?

How will they explain to the electorate that their lands classified as lands for building and urbanizing by the Municipal Master Plan still in vigor and which in practice are not built neither urbanized, will become rural land use, therefore excluded from the urban perimeters and used as prospective for easy profit by the transaction at a good price?

5. The urban rehabilitation concept and the European charters

5.1 *The urban rehabilitation concept*

The concept of urban rehabilitation should be extended by the creation of economic conditions as well as social and cultural which promote the fixation of population in the areas of urban rehabilitation, assuring the modernization of infra-structures and the creation of green spaces.

These are some of the questions which demand reflection at the moment, not only in Portugal but also in many other European countries.

In addition to finding answers the object of this article is to share concerns and hope for a coming victory at least on a legislative level!

5.2 *The European charters*

Since 1992 (18th of March) that the European Urban Charter defined explicitly the fundamental urban rights which the state must guarantee in terms of urban rehabilitation.

Also, the Charter of Venice (May 1964), the European Charter of Architectonic Heritage of 1975, the Granada Convention of 1985, or the Charter of Safeguard to Historic Cities of 1987, among other diplomas, designate and refer to the policies of land ordination which should include cultural heritage.

It is understood in the current regime of Safeguard to Cultural Heritage in Portugal, that if the cultural and urbanized interests are in conflict, the first take priority, in a classification of fixed assets rather ample which concerns:

- monuments;
- groups or places;
- rustic, urban or building blocks;
- other constructions;
- gardens;
- squares or paths.

In relation to these classified assets in the contents of the detailed plan of safeguard, the obligations to preserve (by means of instruments of planning in general or of actions of urban rehabilitation in particular), to defend or value (whether the economic title or cultural) in order to avoid its loss or deterioration; in order to guarantee its enlargement by passing-on to future generations, in an enrichment of cultural heritage for the country.

6. Conclusions

As a conclusion, the law of urban rehabilitation is trying to reverse the model of urbanization of the last years, based on urban expansion areas whose negative consequences are well known to all:

- The waste of oversized infrastructures;
- The spread of urbanization within the urban perimeters, with no continuity of urban fabric;
- The urbanized ruins of new neighborhoods which are still waiting for buyers. For the first time urban rehabilitation action is required for new buildings and new neighborhoods that became old without ever having been inhabited. Their situation of empty spaces requires special strategies of urban rehabilitation. Another question is about the housing estates, because initially these neighborhoods solved the housing shortage, but nowadays they are targets for urban rehabilitation actions.

There is the hope that the new regime of urban rehabilitation will be a step forward in closer urbanized, where the actions: integrate, bring together and formalize the action of the State and of the building owners.

This new regime should be the signal of changing from a State that regulates to a State that contracts with private owners.

A State that is promoting consensus between the parties (local Authorities, land owners, Central authorities) instead of an authoritarian State.

In conclusion, the delimitation of urban rehabilitation areas requires defining the issues to take, their framework within the municipal plans, the definition of the type of urban rehabilitation to take (simple for the buildings or systematic for the urban fabric).

The choice of the manager entity and the establishment of the strategy for intervention program. Some of the biggest challenges currently facing the specialists in Planning and Urban Design in Portugal.

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