Platform of Experts in Planning Law
Conference:
Rethinking planning law in the crisis era: new scope, new tools, new challenges
Athens, 17-18 October 2013

Keynote speech
Planning Policy and Law in Hard Times: The case of Greece under the current crisis

Louis Wassenhoven
Professor Emeritus, National Technical University of Athens

I must first thank the organizers of the conference for inviting me to address this distinguished audience. As an introduction I will make it clear that I am neither a legal expert or jurist, nor a civil servant or public administrator. I am simply an urban and regional planner and, what's worse, a retired academic.

I have pointed out long ago that on the basis of her impressive edifice of planning statutes, spatial plans and legal provisions, Greece gives the misleading impression that it possesses an extremely efficient and elaborate planning system. Yet, the actual situation is far from being satisfactory. The very complexity of the system, its grey areas, the lengthy and convoluted procedures, the dominant role of land property in Greek society, illegal building activity, political pressures and the web of client relations, the propensity to resort to courts even for minor reasons and the ensuing endless litigation, all contribute to inefficiency, delays and serious problems for all concerned, citizens, business firms and public administration.

The basic spatial planning instruments are:

At the national level
- General Framework of Spatial Planning and Sustainable Development (SPSD), i.e. the national spatial plan, and,
- Special Frameworks of SPSD, i.e. nationwide sectoral plans.

At the regional level
- Regional Frameworks of SPSD, i.e. regional spatial plans.

At the local level
- General Town Plans, for all municipalities
- Local (detailed) Plans

There is also a large number of planning instruments for particular purposes, e.g. economic production activities, urban development, urban renewal etc.

My argument in this presentation is that there is in Greece a recurring gap between spatial policy, on one hand, and urban and regional planning law and practice, on the other. As a matter of fact, a clear policy is often absent or is formulated for a short term horizon under the pressure of external and/or unexpected circumstances. This is the case in the current juncture as well, with the result that spatial policy and planning law-making respond to a severe economic crisis without a well thought and reasoned long term perspective. To a large extent this is due to past distortions of the planning system, a point to which I shall return.

The dominant feature of the Greek system of spatial planning, especially in practice, is the emphasis on purely physical aspects. Although, increasingly in the last 15 years and even more so since the onslaught of the current economic crisis, the emphasis has shifted a little, the main concerns remain the development rights of land owners and the nature of property rights, public and private, and their interaction. In spite of the growing role of spatial planning at a higher level (national and regional), the main interest of the average citizen is still in such physical parameters. The term we use in Greece for town or urban planning is *poleodomia* (literally town building), but in everyday jargon "poleodomia" is used to designate the public office which grants building permits, and this is how it is understood by the public at large. The citizens' preoccupation is whether their land is within the limits of a statutory town plan or outside, whether the existing town plan will be extended and incorporate their land, legalize their rights and increase land values, whether the building conditions attached to the plan will be favourable, and finally whether their unlicensed, hence illegal, house will be legalized. Concerns of this type have over the years determined the key concepts for town planners and law makers alike.

For thousands of households owning a piece of real estate particularly in peri-urban areas outside the limits of a statutory town plan, the key questions are whether and how they will build an unauthorized building, on their out-of-plan land parcel, how to get into the approved statutory town plan, how to secure the best possible building conditions, and how the street alignment will be fixed. Once the dream of "entering the town plan" is fulfilled the next issue is to press for improvement of building heights, plot ratios and floor-area ratios, the famous building coefficient, to enhance the value of the property. The issue of *afthaireta* (i.e. illegal buildings) is at the centre of the government's attention in the last 5 years. Ironically it is so because of the opportunity to extract from unlicensed house owners a charge, which is precious in the chase for increased state revenues, in exchange for a vague regularization of the offending building status and an exemption from demolition. Pay attention: not legalization, as this is constitutionally impossible, although even mere exemption from demolition is in doubt.

The economic and social aspects of spatial planning are on the whole of secondary importance for the average citizen (apart from his/her private finances) and poorly understood by a large section of the administration, with the possible exception of those directly involved in formulating and implementing spatial policy at a higher level. Admittedly, national and regional plans have begun recently to have a limited effect on how developments materialize on the ground. However, given that policy making is not usually explicit, the broader dimensions of spatial planning are seldom given prominence in public debate. The interconnectedness of economic and social policy, on one hand, and spatial policy, on the other, is not adequately reflected in the elaboration of the corresponding planning documents, notwithstanding the requirements of EU guidance. Apart from purely local considerations related to house building, there are some broader policies which attract interest as affecting private interests but only when they cause a public reaction, especially when it is violent. I refer to decisions on the location of important infrastructures and amenities, e.g. the location of waste burial sites or on other environmental issues, and to some extent to the effect of national spatial plans with a sectoral focus (e.g. industry, tourism, renewable sources of energy or maritime fish farming) or to the policy of incentives for regional industrial or tourist development.

Apart from problems of comprehension and appreciation, spatial planning and policies, at all levels, suffer from problems which can be found in other government activities as well. The first is the chaotic legal and institutional framework. Planning law is not consolidated and its

provisions are scattered in a large number of statutes, i.e. acts of parliament, presidential decrees, joint or single ministerial decisions and circulars. The second is the inability of the political system and the administration to formulate consistent, long term policies addressing an issue or problem, and, subsequently, to develop a strategy of policy implementation.

One might object of course that the development plans produced in the process of the Community Support Frameworks and the national spatial planning instruments do include a policy statement in the form of a long list of objectives. The problem is that they consist of a reiteration of *clichés*, about sustainable development, the carbon-free economy, urban polycentric systems, urban-rural partnerships etc. Such litanies of objectives lack focus and a selective concentration on key measurable and achievable targets.

I had made similar remarks while writing the Greek report for the EU Compendium of Spatial Planning Systems and Policies in the mid-1990s. I had endeavoured then to find in several central government ministries (education, health, local government, transport etc) a statement outlining their policy, as it impacted on spatial development. I often detected an embarrassment because of the absence of even a short statement explaining what their policy was. It must be admitted that things have considerably improved since then mainly because of the need to formulate policy in order to draw funds from Community Support Frameworks and other EU instruments.

The situation described in the report for the Compendium was that obtaining in early 1994. However, both the system and policy making were in a constant flux even in those days, with sweeping reforms in local government, the introduction of elected 2nd tier local government, the implementation of the European Union 2nd Community Support Framework etc. But, the events that have shaped the current situation of planning, especially its legal apparatus, had taken place much earlier and others followed since then. A turning point of course, some 20 years before the EU Compendium, was the 1975 Constitution.

The Greek Constitution contains specific clauses concerning the obligation of the State to plan the structure of the national territory and the settlements and to protect the physical and cultural environment. Its provisions, as interpreted, sometimes controversially, on a number of occasions by the Council of State, the supreme administrative court, have proved a powerful shield against offensive land development projects and town plan extensions. The *corpus* of the Council's resolutions now forms a body of legal precedents which causes serious headaches to planning authorities.

Two laws on urban development appeared in quick succession in 1979 and 1983. Since 1983, and until the late 1990s, the core of urban planning legislation was an act of that year on the extension of town plans and urban development. Its main characteristics were the introduction of a hierarchy of plans (general and local) and of urban controlled zones to direct urban development. In accordance with this law, general town plans were produced for all municipalities. Master plans, of a more strategic nature, were produced under separate legislation for the two largest cities of the country, Athens and Thessaloniki.

In 1997, the 1983 act was updated by a new one on sustainable urban development, which introduced improved guiding principles and procedures on urban planning for the balanced and sustainable development of cities and smaller settlements. The new legislation introduced for the first time a comprehensive organizational framework for urban renewal, with an emphasis on urban renewal projects of a social nature. Unfortunately, precious little was implemented from

these provisions. The law also introduced the need to prepare master plans for all large centres, in addition to Athens and Thessaloniki.

In 1999, the law on spatial planning and sustainable development introduced a land-use planning framework at the national and regional level. A national spatial plan produced on the strength of this law was finally approved several years later. The same law requires the production of nationwide sectoral plans and of regional plans. 12 regional spatial plans were approved a few years later and are currently being revised. The exception is Attica, the region of Athens, which is covered by the Athens Master Plan. The 1999 act also established an advisory national council, the opinion of which is required for the approval of the national spatial plans. The council consists of representatives from major stakeholders of the public and private sector.

Because of their impact on spatial planning, it is necessary to make a passing reference to the General Building Construction Code, forest legislation which prevents the legalization of extensive tracts of out-of-plan (often illegal) housing developments, and of environmental legislation, enacted because of prior EU regulations, which e.g. designates protected natural zones or imposes processes of environmental impact assessment.

Areas outside the statutory plans can also be built upon, under a separate body of legislation on the so-called “out-of-plan” land. In spite of limitations (e.g. concerning street access or plot size), a combination of practices bypassing the limitations and of course outright illegal construction have produced vast areas of urbanized land of surprisingly high density, mainly around large urban centres. There is however a steady trend towards doing away with “out-of-plan” legislation and towards covering all land with a new generation of planning instruments, a wider version of general town plans for municipalities, of which the number has now been drastically reduced with the result that they are now much larger in size. The trouble is that these plans take many years to be produced and approved.

Presently, we have in Greece elected authorities both at the local level (325 municipalities) and at the regional level (13 regions). But we also have 7 decentralized administrations, of which the heads are appointed by the central government. Hence, these administrations are an arm of the state, to which the central government can devolve powers which are considered by the Constitution to be an affair of the central state and cannot be devolved to elected local or regional authorities. These include important planning powers which in other countries are held by local authorities. When the now extinct 2nd tier prefectural authorities were created in the 1990s, substantial powers were devolved to them by the central government. The ruling of the Council of State that both 1st and 2nd tier local authorities are not part of the State and hence the latter’s planning powers cannot be transferred to local government forced the central government to introduce further legislation which was also ruled unconstitutional. The whole question of devolution of planning powers to local authorities is unfortunately still unresolved.

While a succession of EU Community Support Frameworks and Strategic Development Frameworks continue to dominate economic development policy, but also indirectly spatial development, the national spatial plan and 4 nationwide sectoral spatial plans have received approval, as mentioned earlier, shortly before the economic crisis. In an effort to facilitate investment new planning instruments have been introduced, e.g. for the development of public land or for very large investment projects.

Before providing some general comments on the urban and regional planning system I consider it essential to include a note on the nature of the legal system which I borrow directly from my

report for the EU Compendium. Laws in Greece are usually both substantive, i.e. they contain a rule of law, and formal (e.g. the law approving the annual budget). Substantive statutes are the only sources of law and include acts of parliament, presidential decrees, as in the case of detailed town plans, and ministerial decisions, taken under parliament authorization, as in the case of general town plans. Certain laws appear in the form of codes, e.g. the Forest Code.

Presidential decrees are the most important form of delegated legislation and are issued at the proposal of a minister, either on the basis of statutory delegation, within limits specified in an act of parliament, or on the basis of a "framework-act", mentioned in the Constitution. E.g. the law on urban development areas of 1979 was voted in accordance with an article of the 1975 Constitution, and was later largely replaced by the 1983 act on the extension of town plans and urban development.

Official, detailed town plans, which are binding for all citizens, take the legal form of a presidential decree, under delegation by law, therefore they are both substantive statutes and regulatory administrative acts, i.e. statutory instruments containing legal rules, provided they are accompanied by a statement of building conditions. Individual administrative acts are addressed to individuals, e.g. building permits. The main statute regulating land development control is the General Building Regulation.

Any attempt to unravel the complexities of a spatial planning system, such as that of Greece, and to present the spatial policies of the Greek administration is bound to expose weaknesses. The complexity of spatial planning legislation was eloquently expressed 20 years ago by an expert in planning law, in the preface to his massive study of Greek town planning legislation: "It is not simply difficult, but almost impossible to acquire a complete overview, but also to "tame" the nomothetic chaos of town planning law, so as to process it systematically and with lasting value. Laws, regulatory statutes (presidential decrees and ministerial decisions), circulars etc, the documents concerning issues of town planning legislation, are produced in a torrential, I would say industrial line, process, especially in view, every time, of an electoral period ."

The realization by an external observer of the system's complexity soon leads to the discovery that the relationship between policy making and law making is usually poorly understood, not to say deliberately ignored. Law making is usually a short term response to emerging needs, sometimes merely to appease pressures and accommodate political party expediencies. This probably explains the chaotic situation described earlier. But complexity is also the outcome of political clientelism, i.e. citizen – state client relations, a syndrome commented upon by many students of Greek society. Client citizens and groups are dependent on a state system, which they both venerate and hate. Thus the planning system of the country which boasts that the father of town planning, Hippodamus of Miletus, was the child of a Greek city in 5th c.BC, is found to be unworkable and fragile.

The fragility of the spatial planning system, in spite of its complexity and excessive regulatory nature, is amply demonstrated by the legal flaws of the relevant administrative acts approving developments. These flaws can be due to erroneous interpretations of the law, to political maneuvering or even to unexpected pressures and frequently violent reactions by interested groups which thwart normal planning processes. To demonstrate this point I will use two examples of which I have personal experience.

The nationwide sectoral spatial plan dealing with the location of aquacultures in maritime areas was discussed by the advisory national council, of which I was then the chairman, in late 2011. The council is a consultative body which formulates advice which the Minister for the Environment, Energy and Climate Change is obliged to take into account, but not necessarily accept, before reaching a decision. Such plans are approved by a joint ministerial decision signed by no fewer than eight ministers. However, the deliberations of the national council were forcibly interrupted in three successive meetings by protesting members of local associations and municipal officials, with the result that no formal voting could take place. Faced with the inability to submit a formally approved advice the chairman was simply able to submit a report of proceedings. Nevertheless, the minister proceeded to draft an approval which was signed by the competent ministers and published in the official Government Gazette. Appeals were immediately lodged at the Council of State (the Greek supreme administrative court) seeking to have the joint ministerial decision declared null and void, on the grounds, *inter alia*, that the national council had not produced a formally voted advice. I am not in a position to estimate when the Council of State will reach a verdict, but it is certain that before then a large number of licenses will have been issued to maritime aquaculture firms on the basis of the disputed plan.

My experience of the second example is that of an affected citizen who happens to be also an expert observer. A local development plan was approved in the 1990s for an area in the vicinity of Athens on the grounds that the area concerned was an old “settlement”, already in existence in the early 1920s, in the sense accepted by planning law. There is no point in going into the details of this provision. Following the approval, building permits were granted and buildings built, including villas and blocks of flats. However, after a complaint of neighbours and environmental organizations that the area was “forest area”, the Council of State overturned the administrative act approving the local plan, leaving the administration with the impossible dilemma to turn a blind eye or demolish the offending structures which of course were legally built. The residents and property owners of a neighbouring area who had started a similar process but failed to secure in time the coveted development approval are now up in arms and demand to be given the same development rights. They claim equality of rights and argue that they are being treated as second class citizens. The authorities take the view that their land is public forest land, a claim that the land owners were not aware of when they bought their land and several of them obtained perfectly legal building permits. Their case is likely to drag in courts for several years, to determine whether their land is public or private. Personally, I was informed last autumn that the competent court will hear the case of my property in February 2017. I may well learn the verdict while taking my vacation in heaven, paradise or hell, depending on the weight of my sins.

The current economic and financial crisis has certainly created an emergency situation in the context of which the Greek government is desperately trying to ease the bureaucratic planning restrictions hindering investment and job creation. My argument however is that this is not a novel situation and that the Greek planning system has always been the outcome of major crises and disasters or, at best, seminal events causing a sense of emergency.

The Asia Minor disaster of the early 1920s and the massive inflow of hundreds of thousands of refugees led to an extraordinary programme to house refugees and integrate them in the social fabric. This caused an unprecedented urban development upheaval which coincided with a major piece of town planning legislation in 1923 to regulate the expansion of cities and settlements. The country had hardly recovered from the shock when the 2nd World War, the German occupation and the Civil War of the 1940s caused widespread destruction of the building stock, economic devastation and massive rural – urban migration. Emergency

reconstruction measures and social policies to deal with poverty, homelessness and the dismantling of the productive system were required urgently. This included a policy to encourage house construction, which further stimulated an explosion of urbanization, while town planning was still too weak to control urban development. Then, in the late 1960s, the 7-year military dictatorship, in order to boost its popularity, relaxed controls on intensive urban development. Once again the planning system was too slow to catch up.

There followed a period marked by a sustained effort to modernize the state, its functions and public administration, including a new constitution, and the basic apparatus of legal planning instruments. EU-membership was also a major factor as it led to a series of path-breaking institutional changes and to the introduction of processes which were practically imposed from above in order to modernize to its roots a system suffering from long standing inertia.

This indeed was a period of opportunity to produce a legal and administrative planning system which would be more compact, leaner, consolidated and effective. Instead, the system grew rather by constant accretions to monstrous proportions and not by simplification and consolidation. Perhaps, in the rash to modernize under EU pressure, the system failed to mature gradually along the lines of a policy of long horizon, although this comment is not meant to reject and ignore the brave effort to produce legislation in the late 1990s. I believe further that, again to comply with EU legislation, quite rightly of course, the system had to come face to face with some of its old sins, particularly that of totally ignoring environmental protection, both in cities and in the countryside, peppered as it was with unlicensed constructions. The last years of the 1990s and the early years of the new millennium were to a large extent characterized by the importation of measures to tackle environmental concerns, leading, among others, to strategic environmental assessment for all plans. Gradually, the planning system became dominated by an environmentally-inspired paradigm, regardless of what was happening in the real world. The reasons had to do with the influence of the European Union, the rulings of the Council of State and the ideology of the planners themselves.

This was a reform that the planning system failed to integrate, not on paper (hundreds of environmental impact assessments were produced), but in practice and on the ground. The state was trying to introduce changes that ran against old and established practices, which the state itself had in the past tolerated and sanctioned. In doing so (I must be excused for making here a legal point), the state comes close to violating personal rights, which the citizens, in good faith, were considering as inviolate. I am referring for example to buildings in what the state now considers as forest land, but which in the past it had itself sanctioned with *ad hoc* plans, building permits, infrastructure provision, and a variety of utilities and services, from electricity to schools. Everything would have possibly evolved normally, with economic development and environmental protection continuing apace, if suddenly the economic crisis had not created a new economic and social landscape. The crisis led to a situation in which economic development had to take precedence but without a parallel relaxation of measures to protect the environment and quality of life. And this had to be done under an extremely severe recession, rising unemployment, incomes falling to a level of extreme poverty, and steeply growing taxation, to secure much needed revenue for the state.

This is a tall order indeed. It is a task which the government and the administration will be hard put to bring to a happy end because they are caught in the pincers of conflicting objectives and in the realization that they can’t have the cake and eat it.

The edifice of planning law and practice was thus already a ramshackle construction when the economic crisis, which is still in progress, hit the country in 2008. As far as spatial planning is concerned, the state reacted in a time-honoured way, i.e. through *ad hoc* legislation introducing new planning instruments, of which there were already too many, and by bypassing normal planning procedures. This of course had been the course of action adopted a few years earlier under another extraordinary situation, not as important as the disasters referred to earlier, in which I could have included repeated earthquakes too, but which exhibited a pattern of emergency response. This was the case of the hosting in Athens of the Olympic Games of 2004 and the spate of legislation to enable the building of the necessary infrastructure with *ad hoc* law making.

Back to the current crisis, we have, viewed in a long historical perspective, a feeling of *déjà vu*. In the periods during and after major events of a varying nature, changes and innovations are being hastily introduced under pressure, usually copied from foreign countries, often in a haphazard and spasmodic manner, even in a state of panic, which the complex, inert and unprepared administrative system cannot cope with and implement. One has only to look at how last minute amendments, often in highly cryptic and suspicious wording, are being inserted in drafts of acts about to be voted in parliament late at night with only a handful of deputies present.

The current economic crisis and the need to attract investment here and now has certainly affected the Greek spatial planning system and continues to do so as we speak. A major question is whether it does so in an orderly way or, once again, in a state of panic in order to satisfy the overseers of our economy who represent the lenders of the practically bankrupt Greek State.

The proliferation of planning instruments, already suffering from over-supply is a good example. To the arsenal of often under-used or never-used instruments others are being added to deal with special short-term requirements, in order to secure shortcuts or fast track procedures and avoid the cumbersome procedures of the official, mainstream system. Whether their use will stand the test of future legal appeals to the administrative courts is anybody's guess. This is of course true even with respect to instruments of the so-called mainstream system introduced as far back as the late 1990s. For them too we are still awaiting court decisions.

The multiplicity of instruments is exacerbated by the multiplicity of central government ministries stepping on each other's toes. There is a mainstream planning system but there is also a mainstream planning ministry, in theory in charge of spatial planning, the Ministry for the Environment. Lately however, as a result of the crisis, we have fragments of spatial planning strewn in legislation introduced by sectoral ministries, understandably eager to respond to urgent pressures for investment attraction, for deregulation or procedure simplification, imposed by the demonized memoranda agreed by the Greek government, the EU and the IMF. The complexity of the spatial planning system is thus made worse, not better.

The question of land and property taxation deserves a separate comment. As mentioned already, the government is under pressure to change its fiscal policy, balance the books and stop generating, year-in, year-out, further budget deficits. Part of its task, in a situation of rapidly falling incomes and formidable unemployment, is to raise further taxes, including extremely heavy taxes on real estate. As expected, the repercussions on building construction are direct and most severe. An economic sector which has traditionally and repeatedly been used to revive the economy (not only in Greece of course) is thus being systematically undermined.

Surely urban and regional planning has a role to play, to restore the balance and exploit a valuable resource, the Greeks' attachment to land and property, to serve wider and most important economic recovery goals. I can immediately see the environmentalists raise their eyebrows. But we cannot possibly pretend that nothing has happened and remain faithful to a pre-crisis planning paradigm, which as a matter of fact, we had adhered to more on paper and less in practice. Besides, one could argue that a more liberal planning approach will not necessarily be less environment-friendly than a situation where the individual citizen resorts to all sorts of illegalities to relieve the pressure he is under.

No doubt the Greek planning system needs drastic revision, perhaps needs to be rewritten from scratch. It has to be less cumbersome, slow and obstructive. It has to be more flexible, efficient and responsive. The new system, if there is to be a totally new one, has to result from a long term policy which will put it in place in a horizon of several years. A horizon extending beyond the current state of emergency and beyond the life of any particular government. It must result from serious consultation and debate and be gradually installed to avoid short term entanglements with the courts and risk ending up in an impasse, which will be worse than the present state. Sadly, this is not the usual way of doing business in Greece. It is not also a short term answer to external pressures to modernize the system. The trouble is that even if we were able to replace at a stroke the old system with a new one, to go to sleep with one and wake up in the morning with another, we are likely to end up with an even worse nightmare, like the familiar apprentice sorcerer when he realized he could not control the forces he had unleashed.