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## About city planning law

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**About city planning law**

City planning is certainly a special sphere of human activity, characterized by striking features. In our opinion, it should be noted on the ratio of private and public interests in the implementation of urban development. Within the city planning upon the condition of public interest existence may be neglected private interests, in particular, may be held ransom and withdrawal of lands that are privately owned. But one-sided view on this problem is superficial, since many examples can illustrate how private interests prevail over the public, particularly in building new bridges in Kiev, the expansion of transport units, etc. Herewith extremely important weight has the definition of that common goal and ways for its achievement it in the process of urban development, a crucial supplement to which may become a new city planning brunch of law.

Admittedly, legal rules have necessary and decisive impact on participants of social relations, providing their sustainable and effective movement. Singling out the set of legal rules governing relations in city planning from other areas of law will help to organize them and identify promising areas of development. Consequently, town planning law will be one of the complex areas of law witch subject consists of legal rules other fields – civil, land, administrative and so on.

It is absolutely necessary to recognize the formation of a single codified act in urban planning – Urban Planning Code of Ukraine the draft of which was adopted as a basis June 30, 2010, as this will give a stable foundation for the operation and further development of relevant rules of law, strengthen regulation of these relations.

City planning law is characterized by a particular subject of legal regulation, under which we can understand social relations that occur in city planning at the forecasting, planning and organization design and construction of settlements.

As a method of legal regulation, it should be noted that in city planning are applied imperative and dispositive methods which features and ratio to

relations in urban planning is a main feature that is peculiar for this branch of law, because they limit property rights in order to ensure effective implementation of city planning.

Adoption of the principles of urban planning rights helps to define its guiding principles, which embodied the basic ideas of its functioning, as well as directions for future development. The basic principles of urban planning, of course, should accept the principles of preservation and enrichment of the architectural and historical heritage of our nation, ensuring the normal efficient development of settlements under consideration the interests of all residents, and ensure the priority of environmental safety and others.

In summary, we would like to note that the allocation of urban area of law in the domestic system of law is an important step that will lead to the revival of fundamental research in this branch on which base is appropriate to make a comprehensive law reform in city planning. City planning law, taking into account the above mentioned, can be defined as separate branch of law, which is a set of legal rules governing relations in the city planning to create and maintain a full environment of human livelihoods, to coordination of state, public and private interests in planning and building of settlements.

Recently in the scientific community has been discussed the formation of a new field of law – the city planning law. Nearly ten years ago, a great architect, academician I.M. Smolyar raised questions about the necessity of formation of complex institution that would keep uniform rules of law that govern relations in city planning and in his monograph he allocated for the first time object, method and structure of the new urban field of law<sup>1</sup>. After that began the active discussion about the need and feasibility of the formation of this new field of urban law. And we would like to join it.

Questions about the origin of city planning law were researched by such scholars as I.M. Smolyar, O.P. Anisimov, N.G. Ushkova, S.O. Kuznetsova and others whose works became the base for our research, the basis became general theoretical works of S.S. Alekseev, A.B. Vengerov and V.S. Nerseyanets.

During the research we want above all to find out the necessity and possibility of selection of urban law as a separate branch of law in Ukraine, as well as define the subject and its method of regulation and other reasons to select a specific field of law.

The question of the necessity and feasibility of a separation of a new field of law in the legal system of Ukraine is very important and requires rigorous attention of academics. O.P. Anisimov pertinently notes that when we separate the field of law we should think about the features aspects of life, which has a clearly defined qualitative specificity and social importance

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<sup>1</sup> I.M. Smolyar, *City planning law. The theoretical foundations*, 2000, p. 10.

and a large number of legal norms that do not fit into any of the traditional branches of law<sup>2</sup>. Urban planning, of course, is such area of human activity, which is characterized by striking features.

But, above all, in our opinion, it should be noted about the relationship between private and public interests in the implementation of urban development, particularly under the Act of Ukraine “About Fundamentals of Urban Development” are defined order and grounds for exclusion of lands identified for future development of settlements, construction of concrete places, objects<sup>3</sup>. Thus, by the implementation of urban development private interests may be neglected if there are public interests, in particular, may be held ransom and confiscation of property that is privately owned. Unilateral view on this issue is wrong, since many examples can illustrate how private interests prevail over the public, particularly in building of new bridges in Kiev, the expansion of transport units, etc. But society should be ensured in availability of the possibilities to solve urban problems through private property and the feasibility and need for its removal and in case of achieving the opposite effect should arise a question about the misuse and abuse of powers of relevant bodies, which should be responsible. At this crucial importance has determination of common goal and ways of its achievement in the process of urban development, a crucial supplement to which we can become a new urban field of law.

We should also determine that legal rules are necessary and they have a decisive impact on participants of social relations providing sustainable and effective movement. Therefore, the definition set of legal rules that govern the field of similar relations became the basis for the formation of separate branches of law. Singling out the set of legal rules that govern relations in city planning from other fields of law will allow organizing them and identifying promising areas of development, to justify the use of certain methods and define the basic governing principles of its functioning. Consequently, city planning law will be one of the complex fields of law<sup>4</sup> which meaning includes legal rules of other fields – civil, land, administrative, etc. whereby is realized the regulation of urban development.

Certainly, during discussions about the feasibility of the formation of urban field of law may arise a question about selection of the architectural law<sup>5</sup>. Despite attempts to define the architecture law, we need to point out that urban activities are only part of the architectural and the term “archi-

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<sup>2</sup> A. Anisimov, N. Ushkova, *City planning law – as a separate branch of Russian law*, 2008, p. 2106.

<sup>3</sup> Act of Ukraine “About Fundamentals of Urban Development” 16.11.1992, Відомості Верховної Ради України 1992, no. 52, p. 683.

<sup>4</sup> A. Vengerov, *Theory of State and Law*, 2000. pp. 232–233.

<sup>5</sup> A. Belomesiasev, *The legal framework of architecture*, 2006, p. 16.

ecture” includes not only the activities but also art, the latest of which does not require legal regulation, that is why is necessary to determine the basic relationships that form the subject of urban planning field of the law – area of city planning. Admittedly, the need for the formation of a separate branch of law is not to resolve all more or less similar social relations, but to regulate effectively those similar relations, which regulation requires a goal of their implementation. The activity in city planning is a specific activity, which combines the interests of society and every private person and is realized between defined parties and regulated by the huge number of chaotic rules of law, that predetermines necessity to select a new field of law – city planning law.

Necessary to acknowledge as essential the formation of a single codified act in city planning – Urban Planning Code of Ukraine, the draft of which was adopted as a basis June 30, 2010<sup>6</sup>, because it will give a stable foundation for the functioning of the applicable rules of law, strengthen a legal regulation of these relations and ensure sustainable development of new field of law.

Established clauses of theory of law suggest that the reasons for selecting a specific field of law are subject and method of legal regulation. O.P. Anisimov determines absolutely all reasons for the separation of urban field of the law: a large and clearly expressed specific activity, methods, principles and sources, the existence of institutions that form the system, and specific concepts and categories of urban law as optional features<sup>7</sup>. We fully agree with the approach, but focus our attention on more traditional grounds for the separation of a field of law: a subject and method of legal regulation, as well as the grounds as guiding principles of operation and development.

The subject of legal regulation is defined as social relations which require a legal regulation and are characterized by following features including their directivity, stability and certainty, importance, and the possibility of a control. These signs of social relations allow selecting of uniform set of legal rules to certain branches of law. City planning law is characterized by a particular subject of legal regulation, under which you can imagine relations that appear in city planning and between designated parties. City planning is a specific type of activity that mediates the relationship in forecasting the development of settlements and territories, planning, construction and other use of territories, projection, construction of objects of city planning, construction of other facilities, reconstruction of historical towns while preserving the traditional character of the environment, restoration

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<sup>6</sup> Available at <<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2376-17>>.

<sup>7</sup> A. Anisimov, N. Ushkova, op. cit., p. 2112.

and rehabilitation of cultural heritage objects, creation of engineering and transport infrastructure (Article 1 of the Law of Ukraine “About Principles of Urban Development”). The draft Urban Planning Code of Ukraine contains more detailed list of relations that relate to urban planning: creation of the documents for urban planning, setting mode of development and other use of land areas identified for future urban development needs, the organization of planning, construction and other use of areas and certain lands, choice of allocation of urban construction, identification of land for urban needs, preparation of conclusions apropos the applications (petitions) from natural or legal persons about their intention of building land or a territory, developing and maintaining an inventory of urban settlements; state control of planning, development and other use of territories, establishing responsibility for violation of legislation during the planning, construction and other use of territories, implementation of international cooperation in urban development, setting and application of the licensing of construction activity.

Clearly, the listed activities have unique importance in society and require rigorous attention of public authorities, academics and community. All of the above mentioned relationships can be divided into several groups, including their direction of action: first – a relationship of forecasting, planning and organization of urban planning, and secondly its relationship connected with the design and construction of settlements. Thus it is possible to identify the legal relationships that are the subject of city planning law.

Thus, we can identify the subject field of urban law - public matters that arise in city planning relatively the forecasting, planning and organization design and construction of settlements.

These relations occur only between designated parties, herewith the crucial fact is that those subjects are the original basis for defining relations in city planning. According to Art. 4 of the Law of Ukraine “About Principles of Urban Development” the subjects of urban planning are authorities, local governments, natural and legal persons. These are bodies that execute the state regulation of urban development – the Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, Verkhovna Rada and the Council of Ministers of AR Crimea, local state administrations, local governments and special authorities on urban development and architecture, operating exclusively within the powers defined by section 2 of the Law of Ukraine “About Principles of Urban Development”.

On the method of legal regulation as one of the reasons for the selection of the separate field of law, it should be noted that the regulation of urban development are inherent several methods used only for regulation of relations in this area.

Overall, by the regulation of social relations are commonly used imperative and dispositive methods, witch correlation and features of the applica-



tion to relations in urban planning are specific methods that are inherent in urban field of law.

Among the special techniques of regulation, which are inherent exclusively town-planning law and relations that it conforms we should note the following: choice, removal and providing of lands for urban development needs identified by urban planning documentation, setting mode of use and building of lands, which provides future urban activities; providing of urban conditions and limitations on building of lands; stopping of building, conducted in violation of urban planning and individual objects in the cases stipulated by law, and can harm the environment and others.

Specific of regulatory properties of this field is that most of inherent methods limit property rights to ensure the effective implementation of urban development.

At this crucial importance have the guiding principles or grounds which methods within are being used. So, the next reason for the selection of city planning law in the domestic legal system is the presence of specific principles of urban planning.

Adoption of the principles of urban law helps to define its guiding grounds, which embodied the basic ideas of its functioning, as well as directions for future development. These principles of law can provide an ability to regulate relations arising in the field of urban development efficient and equally including private and public interests. It must be recognized that the field of urban planning is so specific, there are private and public interests, which determine the specific purpose of urban planning as an essential task.

The principles of law include urban and general legal principles, as well as those which inherent in this industry exclusively. The latter can be identified among the main fields of city planning, and basic requirements according to Art. 2 and 5 of the Law of Ukraine "About Principles of Urban Development", in particular, the principles of preservation and enrichment of natural and cultural heritage in urban development; historical continuity, that is to incorporate and preserve the positive achievements of the historical development; having a legitimate goal of developing of planning object and facilities of its achievement; complexity – synergies between all components of development (functioning) of urban planning objects and consideration of perspectives; providing priority to environmental safety requirements during the planning and development of territories and other.

Principles of law are the borders, which should form an integral system of legal rules to ensure appropriate and effective regulation of public relations. What should be recognized as the fundamental principles of urban planning? Clearly, principles of preservation and enrichment of the architectural and historical heritage of our people, that is one of the main tasks of each next generation, but along with should be recognized the fundamental

principles of urban planning and ensure the normal development of efficient settlements under consideration the interests of all residents, and to ensure a priority of environmental safety. These questions can only be updated within this article, recognizing the principles as necessary grounds for the separation of the field of city planning law, but their further detailed investigation represents a huge scientific interest.

Must surely be accepted the principles of urban law as its governing defining ideas that separate this field of law from all others, determine the direction of development and functioning of its provisions. The questions about city planning principles of law are important and promising, and a need to consolidate their regulation in the current legislation – undoubted.

In summary, we would like to note that the separation of complex urban field of law in the domestic system of law is an important step that will lead to the revival of fundamental researches in this area for which it would be reasonable to reform reformation of urban planning law. City planning law, taking into account the above mentioned, can be defined as a complex field of law, which is a set of legal rules governing relations in the field of urban planning to create and maintain a full-fledged human environment, the coordination of state, public and private interests in planning and building of populated territories.

It should be recognized that the allocation of a separate branch of urban planning law will give significant impetus to the development of legal researches and improvement of current legislation in urban planning and architecture.

## **Streszczenie**

### ***O planowaniu przestrzennym***

W środowisku naukowym ostatnio dużo się mówi o nowej dziedzinie prawa – prawie planowania miasta. Chcielibyśmy dołączyć do takich uczonych, jak I.M. Smolyar, O.P. Anisimov, N.G. Ushkova, A. Bielomesiasev i uzasadnić celowość tworzenia takiego prawa na Ukrainie. W trakcie badań chcemy przede wszystkim nagłośnić możliwość wyboru urbanistyki jako odrębnej gałęzi prawa, a także określić przedmiot, sposób jego regulacji prawnych i podstawowe zasady alokacji.