

## **Challenges to spatial justice: How to achieve planning targets while respecting constitutional rights; the new Viennese law on planning**

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The capital of Austria, Vienna, is a growing city in the heart of Europe. By 2014 about 1,8 million people had their permanent place of residence in the city, by 2029 the 2 million limit will be exceeded.<sup>1</sup> With a distribution of 35% building land, 45% green area, 14% traffic areas and 5% water, Vienna meets the demands of many and has again ranked first in the Mercer international quality of living survey, covering 230 cities worldwide.<sup>2</sup>

Vienna's administration now has to ensure, that the city maintains this high standard of living, providing not only for good infrastructure, but also maintaining Vienna as a socially just city.

One of the aspects that need to be considered in this task is the issue of land classified as building land, but not being used as such. In effect, about 25% of Austria's designated construction land has no building or structure on it, but is neither offered for sale.<sup>3</sup> Especially for Vienna with its vast recreational areas it is of utmost importance that estates suitable for construction and thus qualified by spatial plans as building land are in fact used for building houses and not left vacant, to provide its population with sufficient housing and protect green zones from being build up. To meet this target of reducing Vienna's surplus of vacant building land, the city's government enacted new provisions<sup>4</sup> providing for the possibility of zoning building land for a limited time only to

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<sup>1</sup> retrieved from: [www.wien.gv.at/statistik/wieninzahlen.pdf](http://www.wien.gv.at/statistik/wieninzahlen.pdf), 18.10.2015

<sup>2</sup> retrieved from: [www.uk.mercer.com/newsroom/2015-quality-of-living-survey.html](http://www.uk.mercer.com/newsroom/2015-quality-of-living-survey.html), 18.10.2015

<sup>3</sup> Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (2011), Grund genug? Flächenmanagement in Österreich – Fortschritte und Perspektiven, S. 17ff

<sup>4</sup> Wiener Stadtentwicklungs-, Stadtplanungs- und Baugesetzbuch LGBl. Nr 25/2014

put pressure on land owners to make use of their estates' status and actually develop their plots.

However, this law leaves a number of questions open, like within which period constructions need to be erected or what exactly will be the consequences if proprietors fail to meet the requirements.

This contribution will analyse the respective legislation and evaluate its accordance with constitutional rights as well as with existing Austrian principles of planning decisions.

Austria is a member state of the Council of Europe and has enacted the European Convention of Human Rights and Fundamental Freedoms in its constitution. Furthermore, the right to property is also part of the Austrian catalogue of citizens' rights. As a result the Vienna planning law likewise contains regulations providing for compensation in case of loss of value due to zoning decisions. As for the novel instrument of temporary designation as building land these compensation rules have been excluded for losses occurring because of impermanent designation as construction land losing that status since the land in question has not been used for construction within the time limit given. Other specific regulations regarding temporary designation cannot be found in the respective law but must be developed from the above-mentioned fundamental rights. As a result it must be examined whether the compensation provisions might be applicable already when temporary designation as construction land is rendered, especially in situations where land formerly labelled building land might be categorised temporary construction land by a new zoning plan. But also the exact conditions when the time limit has been met have not been specified in the decree and need therefore be given extra attention. Possibilities can be classified as: time of -application of building provision, -entering into force of building provision, -concrete start of construction, -end of construction. Depending on the answer to this topic, further subjects appear, as what will happen to the designation if it is linked to the building provision and owners obtain a building permit but then do not make use of it.

Interesting is also the issue what zoning category will be relevant to a plot loosing its status as temporary building land due to exceeding the time limit for truly

developing the land, as the law does not give any information about the further consequences of not consuming the designation. If the instrument should work as intended, the estate cannot remain with the category of building land. It can neither be seen as lacking a precise designation as this would not be compatible with the principles of zoning in Austria, which ask for every plot having an exact description within the zoning plan. One option could be having the former designation of the land come into force again. This would, however, only work, if the prior title had not also been building land. If the previous description had been green area, one comes again to the question of compensation rules related to financial losses as a result of planning decision as discussed before.

Brief, the new Viennese regulations on temporary zoning of building land should be analysed on a thorough basis and examined whether they can be interpreted in a way which will lead to the intended effect, that is mobilisation of building land, while at the same time meeting the framework provisions of constitutional rights to property as well as principles of planning stipulated by the relevant planning laws.

**References:**

Cech Gerhard, Die Novelle 2014 zur Bauordnung in Wien, immolex 9/2014, 246

Kirchmayer Wolfgang, Die Bauordnungsnovelle 2014 und weitere Neuerungen im Wiener Baurecht, Baurechtliche Blätter 18, 1-15 (2015)

Trapichler Martin, Befristete Baulandwidmung und Vertragsraumordnung als neue Instrumente der Raumordnung nach der wr BauO-Novelle 2014 – Teil 1, Baurechtliche Blätter 18, 16-22 (2015)