

Notes on the General Urban Plan for the Municipality of Cluj-Napoca

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Abstract

The first form of the General Urban Plan (GUP) for the municipality of Cluj-Napoca was issued between 1997 and 1998 and was adopted through the Local Council Ordinance (LCO) no. 729 of 21.12.1999. The second form was adopted through the LCO no. 493 of 22.12.2014 and was elaborated between 2008 and 2014. A reception committee of 5 specialists was formed. As a member of this committee I took part in the analysis of the documentation for the update of GUP for two years, until its approval in 2014. After GUP Cluj-Napoca was approved by in 2014, as a result of numerous complaints regarding parts of the urban documentation PUG filed by citizens, in 2015 it was proposed to modify GUP Cluj-Napoca. I made new notes, titled "Viewpoint". The following text presents this epistolary correspondence. It is relevant because a complex endeavour as the General Urban Plan documentation for a locality such as Cluj-Napoca, with over 300,000 inhabitants, should follow all the elements of the existing frame of legislation. The problems shown regarding PUG Cluj-Napoca are also generally accurate for the entire territory of Romania.

Rezumat

Prima versiune a Planului urbanistic general al municipiului Cluj-Napoca a fost întocmită în perioada 1997-1998 și adoptată prin Hotărârea Consiliului Local (HCL) nr. 792 din 21.12.1999. Cea de a doua versiune a fost adoptată prin HCL nr. 493 din 22.12.2014 și a fost elaborată în perioada 2008-2014. A fost numită o Comisie de recepție alcătuită din 5 specialiști. Fiind membru al acestei comisii am participat la analiza documentației de actualizare a PUG pe parcursul a 2 ani până la adoptarea PUG din 2014. Ulterior adoptării PUG Cluj-Napoca în 2014, ca urmare a numeroaselor reclamații formulate de cetățeni legate de părți ale documentației urbanistice PUG a fost propusă în anul 2015 modificarea PUG Cluj-Napoca. Am formulat mai multe observații denumite „Punct de vedere”. Lucrarea de mai jos prezintă această corespondență de natură epistolară. Relevanța acesteia constă în faptul că un demers complex de dimensiunea unei documentații de tipul Planului urbanistic general pentru o localitate precum Cluj-Napoca, de peste 300.000 de locuitori, ar trebui să respecte toate elementele cadrului legislativ existent. Problemele semnalate pentru PUG Cluj-Napoca au caracter de generalitate pentru tot teritoriul României.

Keywords: General Urban Plan Cluj-Napoca, urbanism, Law 350/2001, Local Urban Regulation, Local Council

1. The first General Urban Plan for the municipality of Cluj-Napoca

In 1996 the government of Romania issued the Government Decree No. 525 1996 [1] which approved the first (and so far, only) set of norms for urbanism and at the same time compels all local administrations (mayors of rural areas, cities, and municipalities) to devise General Urban Plans (GUP).

The endeavours for devising urban plans started after 1996, by organising auctions, followed by the selection of firms that were going to elaborate General Urban Plans, then by devising these plans, and finally by approving them through Local Council Decrees.

In the municipality of Cluj-Napoca the first version of the General Urban Plan was adopted by the Local Council at the end of 1999 by HCL (*eng: Local Council Ordinance; ro: Hotărârea Consiliului Local*) 792/1999. [2]

The documentation for GUP was valid for 10 years, according to the stipulations of a new law adopted in 2001, the first law regarding the development of territory and urbanism. The validity of the first GUP for Cluj-Napoca was later extended for a few years, as a result of a change in Law 350/2001 which allowed for this.

2. The second version of the General Urban Plan for the municipality of Cluj-Napoca

In 2008 the City Hall of Cluj-Napoca announced an auction for the elaboration of a new General Urban Plan. The auction was only finished in June 2009.

During the year 2009 and at the start of 2010 those in charge of elaborating GUP Cluj-Napoca worked on documentation which referred to the existing situation and to foundation studies. Then, they did not work on this project for a year.

The General Urban Plan was approved in 4 stages, each by an ordinance from the Local Council. The first two stages (Stage 1 and Stage 2) dealt with an analysis of the existing situation and foundation studies.

The third stage (Stage 3) was adopted on the 3rd of December 2014 through the “Ordinance for approving Stage 3 – Detailing UTRs (*eng: Reference Territorial Unit/Division; ro: Unitate teritorială de referință*) and local urban rules” from the new GUP. [3] And the fourth stage (Stage 4), the last one, was adopted shortly after Stage 3, on the 22nd of December 2014 through “Ordinance for the approval of the documentation Update of the General Urban Plan for the municipality of Cluj-Napoca.” [4]

3. The reception committee for the General Urban Plan for the municipality of Cluj-Napoca

In 2009 the mayor of the municipality of Cluj-Napoca appoints a reception committee for the General Urban Plan for the municipality of Cluj-Napoca, consisting of 5 specialists, out of which 3 were architects outside the city hall – and I was one of them. During the first part of the elaboration of GUP, meaning the part dedicated to the analysis of the existing situation and foundation studies (2009-2011), the reception committee had no activity because no urban proposals were presented for regulation, neither written nor drawn. It was only in 2013 that a version of the urban proposals was presented, comprised of drawings of the city layout; proposal posted on the site of the City Hall Cluj-Napoca [5]. That is when the activity of the reception committee appointed by the mayor of the municipality of Cluj-Napoca actually started.

This activity consisted of stages involving: studying the proposals of those who elaborate GUP, followed by discussions between the members of the reception committee, and ending with notes and recommendations passed on to those who elaborate GUP. There were five such stages, the notes and recommendations passed on through verbal communication in work meetings. The notes had legal and procedural elements (for example, respecting the frame-content [6], or respecting the related norms [7] but also concrete elements for regulation (for example, taking over the previously adopted Urban Plans on areas). The representatives of the designers of GUP came to the meetings, explained their point of view, listened to the notes made by the members of the Reception Committee and stated that they would make changes based on the notes they agreed with – verbally, they agreed with most of the notes and recommendations. Afterwards, they would modify the drawings (because the Local Urban Regulation was devised only in 2014) and post them on the site of city hall without a preliminary presentation; as a result, we, the members of the Reception Committee, needed a new analysis, meaning a whole redo of the previous stage.

What I have noticed every time was that the designers of GUP modified the proposals only in a slight manner, never more than 50% from the recommendations of the Reception Committee – even if verbally they promised that they would include all the noted that were discussed. For this reason, I thought it was necessary to write down these notes, in a first version in 2014, before forwarding Stage 3 of PUG to the Local Council for approval. This point of view was published on the site of the City Hall of Cluj-Napoca, before adopting LCO (HCL) 437/03.12.2014 [8], and it is presented below as “Viewpoint no. 1”.

Upon seeing that during the meeting of the Local Council of the municipality of Cluj-Napoca on the 3rd of December 2014, my viewpoint was never discussed and noticing that the GUP was about to get its final approval, I rehashed my previous viewpoint in a more detailed manner, presented below as “Viewpoint no. 2”, before the Local Council meeting on the 22nd of December 2014; this time the viewpoint was no longer published on the site of the city hall, and during the meeting on the 22nd of December 2014 there was no discussion about the GUP, besides stating that its approval is

urgent (an incorrect statement because the new changes to Law 350/2001 allowed for extending the validity of the General Urban Plans by 5 years [9], and then by 10 years [10]).

4. Viewpoint no. 1

I wrote the first version before Stage 3 “Detailing UTRs and local urban rules”. This document was published on the site of the City Hall of Cluj-Napoca before the Local Council meeting on the 22nd of December 2014 [11], together with other documents related to the presentation of the ordinance project up for debate at the Local Council of the municipality of Cluj-Napoca. Unfortunately, this text was of no consequence, it was neither analysed nor discussed by the local councillors, and those in charge of elaborating GUP did not take it into consideration. Below, the text is presented as it was written. The footnotes present the norms that were disregarded/breached.

«VIEWPOINT
regarding the urban documentation Update of the General Urban Plan
for the municipality of Cluj-Napoca

The undersigned Iancu Adrian, doctor in urbanism, technician judicial expert in “Urbanism and development of territory”, as a member of the reception committee. After analysing the urban documentation “Update of the General Urban Plan for the municipality of Cluj-Napoca”, I present this Viewpoint due to the fact that my opinion is, in some aspects, different from the other members of the committee. Therefore, I will refer to aspects of form and content regarding the Local Urban Regulation of GUP Cluj-Napoca, as well as to the functional classification of some areas (shown in the drawings titled UTR Regulations and Square Regulations).

A. Notes on the drawings:

I noticed that there are regulations that breach the current legislation.

A.1. For example, there are properties belonging to natural or legal persons that have been classified as green areas even though these terrains are listed in the land register as “terrains” or “construction yards” [12].

A.2. Also, in some cases the previous classifications of some living areas have been changed to other areas that breach the updated Law 350/2001, Annex no. 1 – definition of terms used by the law, “ Reference Territorial Unit (UTR) – urban subdivision of the territory of the administrative-territorial unit, demarcated by the land register, characterised by functional and morphologic homogeneity from an urban and architectural perspective, with the purpose of homogenous urban regulation. UTR is demarcated, accordingly, by landform and similar scenery, unitary historical evolution of a certain period, a system of lots and means of homogenous construction, similar uses for the terrains and constructions, similar judicial regime of buildings”; therefore, by disregarding the elements of “functional and morphologic homogeneity”, and as a result of personal interest, there are cases where (despite the fact that, in one case the proposal for modifying the functional classification was rejected 3 times in CTATU (*eng.: Technical Commission of urbanism; ro.: Comisia tehnică de urbanism și amenajarea teritoriului*), due to requesting the Opportunity approval/notice

(*ro.: Aviz de oportunitate*) the functional classification of an area of small family houses is changed to an area that allows the construction of tall apartment buildings.

A.3. When it comes to streets, GUP imposes enlarging the profiles in existing built area, which would involve massive demolitions – with no justification or clarification regarding legal procedures (expropriations or others). [13]

B. Notes on the Local Urban Regulation (RLU – *ro.: Regulament local de urbanism*)

B.1. Notes regarding the form of RLU: the regulations for the territorial units of reference are very big (between 4 and 12 pages, most of them over 6 pages), which will lead to a very big volume of Urban Certificates, so it will be very difficult to ensure efficiency for the process of Space Management of Territory.

B.2. Notes regarding the content of RLU:

- a. There is a breach in the stipulations of Law 350/2001 regarding the definitions of urban indices by some rules that do not exist in the law (almost for all the UTRs).
- b. There is a breach in Law 350/2001 which stipulates in Art. 49, section [14]: “the general urban regulation is a system of technical, judicial, and economical norms, which is the basis for elaborating urban plans, as well as local urban regulations”. Therefore, the technical norms established through RGU (*eng.: General Regulation for Urbanism; ro.: Regulament general de urbanism*) - approved by HG (*eng.: Gouvernement Decision; ro.: Hotărârea Guvernului*) no. 525/1996 - are disregarded when it comes to ensuring parking spaces (Art. 33, section 1 of RGU) by giving the possibility to build without ensuring parking spaces on one’s lot (which will invalidate the effort of the administration to regulate the problem of parking in Cluj-Napoca for the past 10 years); or ensuring green areas (art. 34 and Annex 6 of RGU) by taking into consideration only percentage of the terrain without establishing a norm for the number of people – which can lead to building collective housing with insufficient green areas (this is the case for several UTRs, but the most significant example is UTR RrM1, where green areas can be 5%, no matter the number of apartments or inhabitants).
- c. Disregarding the legislation about green areas (Law 24/2007 with its subsequent changes), due to the fact that the stipulations of this legislation are not taken into consideration and there is no mention of them in the RLU of every UTR [15].
- d. Notions that do not exist in legislation are introduced, for example “the principle of contract for common courtyard” – which can lead to contradictory interpretations. [16]
- e. A lack of clear regulation for building outside the built-up areas; for example it is not possible to build urban networks or streets; also, the stipulations of HCL defining the Agricultural Annexes [17] are ignored.
- f. The current regulation for advertising is ignored, there are no rules mentioned in the text of UTR.
- g. Most of the rules stipulated for “The exterior aspect of buildings” lack technical clarity, so they are up to interpretation and inapplicable.

- h. The text is full of terms that are not defined, such as: “lots from an urban perspective”, “raising the level of urban finishing”, “the manner of urban construction” (I’ve provided examples only from a text of UTR RrM1, chapter “A. Primary conditioning”)
- i. The text has contradictory phrasing; for example, also from a text of UTR RrM1, chapter “A. Primary conditioning”, it is not clear if one should elaborate a PUD (*eng.: Detailed Urban Plan; ro.: Plan urbanistic de detaliu*) or PUZ (*eng.: Urban Plan of Areas / Zonal urban Plan; ro.: Plan urbanistic zonal*).

These are only some examples. I did not find any text of an UTR that is clear, that does not have contradictory phrasing or that does not disregard at least one current legal stipulation.

In my opinion, due to gained experience, approving Update of the General Urban Plan in the form that it is now will lead to a great number of judicial actions. These can be avoided (most of them) by correcting the errors or following the current legal stipulations.

Unfortunately, communication with the collective in charge of elaborating was impossible; the errors that were signalled were only marginally corrected, and only after insisting several times.

At the end, I will quote the following paragraphs of Law 350/2001:

“Art. 6: the authorities of the central and local public administration are responsible, according to current law, for the activity of the development of territory and urbanism.”

“Art. 25, section (1): the local council coordinates and is responsible for the whole activity of urbanism on the territory of the administrative-territorial unit and ensures abiding by the stipulations of the approved documentation for the development of territory and urbanism, for completing the programme of urban development of the localities part of the rural area or of the city.”

Written by

Associate Professor Doctor Architect Iancu Adrian»

5. Viewpoint no. 2

This text was written before the period of time that followed the adoption of Stage 3 of GUP and before the adoption of the final form of GUP, between 3rd and 22nd December 2014. As it can be seen from the first part, this text is an addition to the first, presented above. Unlike the previous text, this was not published on the site of the City Hall of Cluj-Napoca and it was not presented to local councillors, so it was not discussed. Moreover, the adoption of the final stage of the new GUP of the municipality of Cluj-Napoca happened very quickly, without discussing any problems – except for the fact that it was very urgent for this new GUP to be enacted. What happened on the 22nd of December – something that few people know – was that those who elaborated GUP brought in the final drawings of the UTR classifications several hours before the Local Council meeting; and what could be later noticed (after a few weeks and months) was that they made rather consistent changes

without notifying anyone and without presenting these changes for information and public debate – which is grave.

The consequences that followed brought a lot of people in delicate or dramatic situations.

Below is the text of the second viewpoint.

«VIEWPOINT 2
regarding the urban documentation Update of the General Urban Plan
for the municipality of Cluj-Napoca

The undersigned Iancu Adrian, doctor in urbanism, technician judicial expert in “Urbanism and development of territory”, as a member of the reception committee for the urban documentation “Update of the General Urban Plan”,

Due to the fact that the adoption of Stage 4 (final) of the documentation “Update of the General Urban Plan” Cluj-Napoca is under consideration,

I present below and addition to the viewpoint previously expressed for Stage 3.

I’d like to state that I did not have the opportunity to notice any change to the documentation for Stage 3, no changes were published on the site of the City Hall until this text was written; until this date the author of GUP had not submitted to the city hall the final form of the documentation GUP, and as a result this could not be consulted (even if it were submitted, analysing the documentation would take several days). With regard to the notes presented in the previous Viewpoint I have noticed that they were introduced only marginally, just how the author of GUP had done before. The personal viewpoints expressed by one of the authors are personal opinions and misinterpretations (such as the finding reasons for disregarding the stipulations of art. 33 of HG 525/1996 concerning parking outside public property; the author of GUP did not have the right to give waivers as he is not the Mayor or the Local or County Council, and section (2) refers to “using public property” and not to the possibility of not ensuring parking spaces on one’s property and outside public property; compensatory actions can be taken, but without breaching this stipulation – and this is not the case, art 33, section 1 was disregarded for almost all Territorial units of reference, and thus Law 350/2001, art. 49 is also breached).

The notes that I’ve made are based on the experience I gained in the last 10 years, as an official or a technician judicial expert, period of time during which I have analysed numerous decisions made by courts from all over the country with regard to the domain of urbanism; I have noticed that there is a certain judicial practice regarding problems of urbanism – and I consider that these elements should be taken into consideration, regardless of anyone’s personal opinion. For this reason, I stand by my previous viewpoint. In addition to it, I present the following:

A. The activity of the reception committee for the documentation “Update of the General Urban Plan” Cluj-Napoca.

The reception committee has been active in the period of time after it was founded and until today. More precisely, the activity started approximately 2 years after the author of PUG was established, due to a lack of material because of a delay in the elaboration of the documentation (the author of GUP did not work for a year, with the exception of the collectives that did the foundation studies).

The reception committee carried its activity at the city hall or individually for every member (for analysing the material posted on the site of the city hall). There were meetings between the members of the committee or together with the elaboration collective at the city hall (I would say about 20 meetings). During these meetings the documents given by those who elaborate GUP were analysed, notes were given orally, in writing and in drawings. The members of the committee requested additions to the documentation, updates (for example introducing the approved PUZs which had been ignored), introducing elements of legislation (for example the rules that come from applying OMS 536/1997).

Those in charge of elaborating GUP introduced some of the notes made by members of the committee, after a lot of demands and insistence (for example establishing protected areas, which initially surpassed the limits listed by legislative acts, took about a year). Most of the notes from the members of the committee were ignored, or introduced in an initial stage but then eliminated. I noticed a lot of times that the authors of GUP claimed that the notes from the members of the committee had been introduced, and then on verifying these claims it could be seen that only few of the numerous notes can be found in the modified drawings or texts.

The notes from the members of the committee had only one purpose: conforming to legality (for example we had to insist for a long time so that the written part – the memoir and the local regulation – would have the form established by the guide of design GP 038/99, because in this case the authors of GUP had personal opinions that did not even conform to the form of this legal regulation).

As a result of this evolution I restate my opinion that the current form of the documentation GUP has a lot of shortfalls, inadequacies, and errors made with or without intention.

B. Notes on the errors that were detected

B.1. Notes on the drawings [18]

- a. The documentation is not up to date (in some cases, the developments of the past 4 years have been ignored, so that some areas which now have buildings figure as without buildings and with regulations for urbanisation) – which leads to incorrect consequences (for example, for the PUZ with lots for streets that were broken down, it is mandatory to elaborate other urban documentation).
- b. Arbitrarily deciding street profiles (for example in built areas, even central – which will be impossible to apply), without basin it on a competent traffic study that would justify the necessity for these profiles
- c. Changing the category for an area from a living area to a mixt area (breaching the stipulations of Law 350/2001)

B.2. Notes regarding the form of RLU: the regulations for UTR are very big (between 4 and 12 pages, most of them over 6 pages), which will lead to a very big volume of Urban Certificates. It

will be very difficult to have urban certificates and to actually work with them. The regulations need to be clear and concise (and they are not).

I annexed an example of regulation (Annex no.1) for UTR-Liu which is no longer than one page and which has all the necessary and sufficient elements to be used in the process of urban Management for issuing CU (*eng.: Urban Certificate / Certificate of Urbanism; ro.: Certificat de urbanism*). [19]

B.3. Notes regarding the content of RLU:

- a. There is a breach in the stipulations of Law 350/2001 regarding the definitions of urban indices by some rules that do not exist in the law (almost for all the UTRs). [20]
- b. There is a breach in the stipulations of Law 350/2001, and of Law 24/2007.
- c. There is a lack of regulation for construction conditions for living spaces in mixt areas, central areas, etc. (as in other areas than those for living spaces), with direct consequences towards the quality of living, towards ensuring legal conditions for green areas for living spaces, disregarding HG 525/196 and therefore also Law 350/2001.
- d. There is a lack of clear regulation for some elements that emerged as necessary (for example establishing level 0,00 or the way to count distances regarding property limits).
- e. There is a lack of definition for terms which have influence on calculating urban indices (for example “terrace”).
- f. Using made-up terms that have no judicial relevance [21]
- g. Multiple situations where the rules given for the same territorial unit of reference contradict one another.

C. Elements that need to be revised

- a. Redoing the Local urban regulation, at least for the territorial units of reference, by diminishing their volume 1 page, at most 2 pages – I’ve proved that this is possible) and using clear technical terms, that can be understood by any person with an average training
- b. Adding rules to the Local urban regulation that would clarify notions and terms (for example measuring distances, defining some terms, ways to compensate for urban operations).
- c. Updating the drawings of GUP
- d. Correcting the errors noticed in the drawings of GUP

D. Recommendations

In my opinion, the documentation “Update of the General Urban Plan” Cluj-Napoca should not be adopted in its current form. I believe this documentation is of a lower quality than the GUP adopted in 1999, especially the Local Urban Regulation.

However, taking into consideration the time crisis, if it is decided to adopt this documentation, I recommend that the Ordinance of the Local Council should assign a period of time (for example 3 months) for the documentation to be revised (by modifying or adding things in accordance to the aforementioned notes, or by introducing the changes requested by petitioners through preliminary complaints or justified demands). This way, the revised documentation would be approved again by HCL – and numerous court proceedings will be avoided.

Written by
Associate Professor Doctor Architect Iancu Adrian»

6. Viewpoint no. 3

The General Urban Plan for the municipality of Cluj-Napoca, in its updated version approved on the 22nd of December 2014, was posted on the site of the City Hall in its final form only at the beginning of January 2015. Starting with the end of January the first complaints about GUP have been filed; some are about the classification of the territorial units of reference, others are about the text of the Local urban regulation; then, upon noticing serious consequences, there have been complaints regarding the servitudes of public utility, meaning the areas affected by widening the existing streets or by building new streets.

Towards the half of 2015, there was already talk of updating GUP, and the official intention was stated at the end of the year when those in charge of GUP presented a new form of the Local urban regulation. I was asked by the representatives of the local administration to analyse the proposal for changing GUP by the makers.

I wrote another text that reprises some problems and adds new observations to the previous ones- the text is presented below.

«VIEWPOINT 3 regarding the urban documentation Update of the General Urban Plan for the municipality of Cluj-Napoca

The undersigned Iancu Adrian, doctor in urbanism, technician judicial expert in “Urbanism and development of territory”, as a member of the reception committee for the urban documentation “Update of the General Urban Plan”, due to the fact that there is a proposal to adopt the changes to RLU, part of GUP Cluj-Napoca, I present the following Viewpoint.

A. There are still the same problems mentioned in the previous Viewpoints:

- RLU contains stipulations that break the updated Law 350/2001, Law 24/2007 and RGU approved by HG 525/1996
- The text of RLU has terms that do not appear in the legal frame that gives urban rules and build permits (masterplan, restructuring procedure based on a contract, a contract of common courtyard, etc.)
- The regulations for UTR are very big, which could be seen from the large quantity of paper used for them (some of the CU were even longer than 20 pages). This is due to the fact that there are texts which are not relevant (presenting generalities that are up to interpretation and that have no actual application).

- There is confusion regarding PUZ and PUD (it is not clear when and why it is necessary to compile an urban documentation), both of them appear in the text of the same UTRs
- For some UTRs there are no clear rules regarding green areas (rules that refer to the number of people, especially for living spaces) or playgrounds. This allows for apartment buildings with no green spaces or adequate playgrounds – decreasing the quality of living.
- It's not allowed to build in UTR Vp – even if this is against some related laws (check the Forest Code, etc.)
- The rules for ensuring parking spaces allow for exceptions which will lead to overcrowding in most areas, especially in the central area. This will undermine the efforts made by the public administration in the past 10 years to solve the problem of parking spaces and of traffic in Cluj-Napoca.
- There is a lack of clear regulation for some elements that emerged as necessary (for example establishing level 0,00 or the way to count distances regarding property limits).
- The urban indices can have very high values that cannot be reached but which send erroneous messages to owners or to investors and as a result they push for these maximal values (by disregarding some legal stipulations).
- Some changes were made by the author of RLU out of personal interest

B. regarding the proposal for UTR A and L – and the possibility for these areas to be changed by PUZ:

- It does not follow the principles of durable development, especially ensuring green spaces (26 sqm./person) as stipulated in the current legislation.
- I propose adopting a regulation that reprises the text of HCL 206/2009 – tailored for UTR A or L, ensuring 50% green areas with forest.

Written by

Associate Professor Doctor Architect Iancu Adrian

12 November 2015»

7. Viewpoint no. 4

Upon noticing that the notes written in “Viewpoint no.3” had no effect for the makers of GUP or for the administration – which did not demand (or obtain) from the makers of GUP to fix the errors – I have written a more detailed viewpoint before the public debate set on the 28th January 2016 [22], and later postponed for the 29th January.

I could not attend this public debate, but the piece written by was not discussed, with the exception of a single note, the one referring to the interdiction to build in areas classified as forest and titled UTR-Vp.

I have written the last piece without signing it as a member of the reception committee, from a personal standpoint. I have realised that the representatives from local authorities simply refuse to discuss the problem that were signalled, despite the fact that I officially submitted this last text and

addressed it to the Mayor and to the Local Council; it was of no consequence, it's as if it doesn't exist.

I present below the text of the last Viewpoint.

«VIEWPOINT 4
Notes, conclusions, and appraisals
regarding the urban documentation Update of the General Urban Plan
for the municipality of Cluj-Napoca
for the public debate set on 28th January 2016

The undersigned Iancu Adrian, doctor in urbanism, technician judicial expert in “Urbanism and development of territory”, member of CTATU Cluj-Napoca,

Due to the fact that there is a proposal to adopt the changes to RLU, part of PUG Cluj-Napoca, I present the following Viewpoint:

Notes, conclusions, and appraisals.

A. On drawings (plans for dividing the urban areas of the municipality of Cluj-Napoca in Territorial units of reference and establishing servitudes of public utility:

1. Despite preliminary complaints, there are still numerous errors of classification of UTR (areas with certain characteristics are wrongly classified). Some of the errors were made by the authors of GUP intentionally, some of them were made due to negligence. The makers of PUG Cluj-Napoca showed dishonesty in correcting errors, even if they had been previously signalled (for example, refusing to classify the terrain belonging to the City Hall from Borhanci as fit for construction). As a result, a lot of preliminary complaints were submitted (as it had been estimated more than a year ago in the Viewpoints referring to GUP); some of them were solved by the Local Council of the municipality of Cluj-Napoca, and some of them proceeded or will proceed to court.

2. Over the past year, it became obvious that the servitudes of public utility (most of them) had been arbitrarily established by the makers of GUP. For example, the unjustified widening of some streets (street Constanta or Paris) which implies the demolition of numerous buildings, some of them new, some of them monuments; or, for example, assigning servitudes on only one side of the street (benefiting the other side, without justification); or establishing a route for servitudes for streets that ignore the existing street network (as is the case with Muncii Boulevard) or are in unbuilt areas (most of the territories which are not urbanised). In my opinion, establishing these servitudes and the rules stipulated by RLU (the Local Urban Regulation) pertaining to PUG is an abuse by the makers of GUP.

This abusive attitude gravely breaches the right to property, causing major problems for land owners and also for the employees at the city hall (who don't know how to interpret the contradictory rules). The abusive and unprofessional manner of establishing servitudes by the makers of PUG, as well as their refusal to accept changes that would follow the current legislation, will lead to (I predict) new court proceedings, this time more in number and more costly.

B. On the Local Urban Regulation (RLU), pertaining to GUP. The following notes and conclusions have (most of them) continuity – they can also be found in the previous version of RLU – the makers of GUP refused to correct the initial errors, even if they had been signalled.

1. The text of RLU has terms that do not appear in the legal frame that gives urban rules and build permits (master plan, director plan, restructuring procedure based on a contract, etc.) – for example, master plan and director plan are terms used in most UTRs. Because they are not part of the law, they cause and will always cause situations where the employees at the city hall Cluj-Napoca have to ask petitioners to compile urban documentations that are not defined in the law (“Director plan” or “master plan”) or to follow procedures that are legally inexistent (“the restructuring procedure based on a contract”).

As an example, in the rules for UTR ZCP-RiM or UTR RiM it is stated that “the restructuring procedure based on a contract” is done between the Local Council and the land owners. How will the local Council proceed once it receives such a request? What legislation will be used, who will negotiate, how will the negotiations be kept transparent and without suspicion regarding fairness? These terms have been taken by the makers of GUP from various texts (all outside Law 350/2001) and are still unnecessarily used – we have to use wordings and terms that currently exist in the legislative frame. Using terms that are inexistent in the current legislation will lead to blocking any procedure that uses this terminology because there are no norms that can offer the definition or method of using these terms, since they have been adopted in a way that has no connection with the actual urban realities.

2. The phrase “Urbanisation procedure” is frequently used – in most urbanisation UTRs: UM1, UM2, UM3, UM4, ULi, etc. almost everything that has to do with this notion is basically an abuse and it reinvents the legislation, starting with section 1 where the maker of GUP invent responsibilities that CTATU does not have according to Law 350/2001, and then continuing with reinventing lot distribution, and many other elements that will make it impossible to build in areas that demand urbanisation according to RLU of GUP Cluj-Napoca. Similarly, most of the stipulations from Part II, Chapter 3, Art. 10 are outside the legal stipulations.

3. Urban documentations that have been elaborated before the adoption of the current GUP are valid only until June 2016, only 5 months from now, no matter if they had or not judicial effects. As an example, if all the building of a PUZ have been done except one, the owner of that lot will have to pay for a new PUZ, even if the street is done according to PUZ and all the surrounding lots are built on. Or, for example, if an investor has completed 7 of the 10 buildings listed in a PUZ (due to different reasons, from financial problems to problems at the stages of investment), he will have to pay for a new PUZ for the 3 remaining buildings – but in most cases he will not be allowed to build what it was permitted before. This attitude of the makers of GUP disregards the current legislation, breaking the stipulations of Law 350/2001, art. 56, section (5). Moreover, this shows disinterest for the right to property of the citizens of the municipality, many of the things shown above being serious breaches of the Constitution.

4. The servitudes of public utility are (as mentioned above) approached in an abusive manner in most cases, outside a legal frame, and they cause situations that are contradictory or impossible to solve. These rules are also in Part II, Chapter 3, Art. 25 and Art.31, but also in most rules for UTR

from Part III of the RLU. Amongst others, there are no details about or deadlines for “acquiring or expropriating before the Built Permit is issued” for the affected areas – who will perform this operation, in how much time? Anyway, immediately applying these servitudes contravenes the validity principle of the Urban Certificates (CU) issued before the new PUG (even if they are recognised) because they entail operations that annul the dates listed in these CUs. I want to state that I am not against servitudes of public utility, but I do not agree with the way the makers of GUP established most of them (the route, the dimensions) without a scientific base, and also the connected procedural rules imposed in an abusive way.

5. Almost all UTRs are conditioned, one way or another, by PUD or PUZ. For example, PUD is requested in cases where the lot has an irregular shape – more than 90% of the lots in Cluj-Napoca, where the fact that two sides are not parallel to each other can be interpreted as an irregular shape. Or, for example, the situation that demands “PUZ or PUD” without making it clear when it should be PUZ and when it should be PUD. These stipulations that excessively ask for urban documentation can create possible abusive interpretations by the persons who compile Urban certificates but, surely, they will lead to overcrowding CTATU (*eng.: Technical Commision of Urbanism; ro.: Comisia tehnică de urbanism și amenajarea teritoriului*) and CU, with clear consequences of stopping investments (this phenomenon will happen in the second half of 2016 and then in 2017). Moreover, the lack of an express regulation (PUD or PUZ) will create different situations, for similar cases, causing inequity, depending on each project.

6. Green areas were established on numerous private terrains (most of them classified as “courtyards-constructions”) without any element of compensation. Green areas were invented where they do not exist or cannot be applied (for example for UTR Ve or Vpr) which is an abusive practice because most of the terrains are private properties, and network owners did not regulate the occupation of those terrains. This way, the designers of GUP break the right to property without any compensation, imposing total interdictions for construction; in many cases the distances to the networks are much more extended than the stipulations listed in the norms pertaining to those networks, and sometimes they overlap existing buildings.

7. The urban indices POT (*eng.: Percentage of occupation of Territory / Land Use Percentage; ro.: Procentul de ocupare al terenului*) and CUT (*eng. Coefficient of Usage of Territory / Land Use Coefficient; ro.: Coeficientul de utilizare al terenului*) listed in RLU disregard, most times, the definitions from Law 350/2001. For example, the stipulations included in the definition of the basement level of RLU, Part II, Chapter 3, Art. 11, section (6), letter (c) are an invention with no legal support, which contradicts the actual definition of the basement level, and which encourages overbuilding on the lots. The same attitude of encouragement towards overbuilding can be seen throughout the whole RLU for GUP Cluj-Napoca. As an example, establishing maximal POT for UTR LcA and Le violates the stipulations of HG 525/1996, Annex 2, 2.1.5. (which states that maximal POT is 35% for P – P+2, and 20% for more than 3 levels) and also the updated Law 350/2001, Art. 49 (which does not stipulate waivers from RGU). Also, numerous UTRs (M1, M2, M3, M4, R, etc.) encourage the apparition of living areas where POT surpassed the legal stipulations mentioned above, by masking the living areas under different names.

7. The situation regarding green areas is a special one. As intransigent as the attitude towards areas such as Ve and Vpr is (and illegal, as I have shown above), just so the approach in numerous UTRs is permissive (for example M, R or ZCP), where there can be waivers up to 5% of the terrain as a green area. This happens because there is no rule that links the number of persons with spaces reserved for green areas or playgrounds, even if living there is permitted and even encouraged by most UTR. This disregards the stipulations of the updated Law 24/2007, and the norm of 25 sqm./person is met by other owners who were given restrictions by the classification of green areas. On the other hand, for example, for UTR Vp the makers of GUP go as far as to set urban indices at zero, even if in previous articles they allow raising some constructions (such as aedicules or others). This UTR also breaks the stipulation of the Forest Code (*ro.: Codul Silvic*) (a law of superior level to a local regulation elaborated under the conditions criticised above).

8. The rules regarding parking spaces (which were challenging to appoint in Cluj-Napoca, and are also insufficient) are shattered by the stipulations of several UTRs (such as M, R, ZCP) that allow ensuring the necessary parking spaces outside the lot, even for new buildings, through a system of concession (that can be annulled any time after the registration of the building).

Besides these rules that also existed in previous versions, the makers of PUG have a new invention (check UTR ZCPM and others) that states that: “the accommodations that do not have a parking space ... have the right to a subscription for public parking areas”. This is abusive because the makers of PUG take the place of the legislator by setting rights and obligations for a third party, which violates the Romanian Constitution – on one hand, and on the other hand it stops the Local Council from establishing or modifying future strategies for ensuring parking spaces. Moreover, there will be numerous situations where there is a breach in the system of concessions or rent for land, for ensuring parking spaces until a building is enlisted, and then the same lot is used for other projects, different than the initial one. This will lead to a lack of control from the local public administration over the leasehold properties (including parking spaces), which will create a total lack of control over the parking spaces for the buildings that are part of the aforementioned UTR.

9. The makers of GUP Cluj-Napoca felt the need to set duties and obligations for CTATU and for the Chief Architect – outside the law, substituting the legislator. For example, in UTR ZCP-RiM and RiM “the urban program is established through the Opportunity Notice...”; or UTR M, UTR UM, UIs, Ulc, (and every one with U) demand for a CTATU Notice for the opportunity of urbanisation and then for the Opportunity Notice; or most UTR that demand PUZ require “the design theme to be approved by CTATU”. These attributions are not included in the stipulations of Law 350/2001 for the responsibilities of the appropriate persons, so the cannot be attributions imposed by the makers of GUP through their own regulation. Thus, besides the change of attributions, there are many other institutions that need to be regulated (for example, response in the case of not following these new attributions set by the maker of GUP of the municipality, they way to organise meetings for properly carrying out the new attributions, etc.).

10. The makers of GUP think that the height of the buildings in Cluj-Napoca needs to be limited, so in most UTRs the height does not exceed P+4 ($P = \text{ground/first floor} + 4 \text{ floors/stories}$), or rarely P+6 and exceptionally P+8, even if in those areas there are P+10, and even if PUZ is required. There is no legal justification for this attitude.

11. The conditions for alignment or for retraction from alignment are very little flexible, so that there are situations where the rules contravene the current development of an existing area. The problem which arises from this approach is that there will be situations with a negative effect towards the urban image (situations that were signalled in several cases in the past year in the urban documentations submitted for approval), especially since the alignment rules can only be modified by PUZ or GUP.

12. Several UTRs (for example Liu, Lip and others) impose rules regarding the strip of land adjacent to the alignment on which construction is possible, or maximal surfaces for pavilions of 15 sqm. These kinds of rules don't take into consideration the existing situation of an area (where a lot of times, there was construction done in the second row, at the back of the lots), so now an owner cannot do what his neighbours have done before – a situation which lacks equity and leads to discrimination. Also, the rule is abusive because it benefits the owners of small terrains (such as 300 sqm.) and it discriminates the owners of larger terrains (such as 1500 sqm.), the latter will not be able to reach the urban indices that others have.

13. Several already formed UTRs (usually for accommodations such as Liu, Lip, Lir) have a series of functions, attributes, services that will no longer be able to function because the new regulation does not allow it, limiting a lot of areas. In these cases the makers of GUP did not take into consideration the existing situation of a terrain, which will probably lead to new types of preliminary complaints and court proceedings; for example, now, for the activity permit fire fighters request for the activity to be listed in the land registered, and the owners who did not do this before 2015 can no longer do this with the new regulation.

14. The regulations for UTR are very big, which could be seen from the large quantity of paper used for them (some of the CU were even longer than 20 pages). This is due to the fact that there are texts which are not relevant (presenting generalities that are up to interpretation and that have no actual application).

15. The current RLU for GUP Cluj-Napoca is 500 pages long and the previous one was 100 pages long. The current rules are more extensive but also harder to apply. The makers of GUP did not want to approve the suggestions of reducing and clarifying RLU, out of personal ambition and/or stubbornness, even if they were informed on how each text of the numerous UTRs could be reduced by at least 50%. This attitude is not only uneconomical but it also brings extra costs both for the administration (a large consumption of paper) and for the beneficiaries (bigger costs for copying or for legal validation). It is inadmissible that in order to place a firm on an existing house a complete Urban certificate needs to be issued, which contains all the rules (having a minimum of 5 pages, usually 8-10 pages, and sometimes 24 pages).

Besides these elements regarding economy, the new regulations GUP and RLU are written in a manner that not even a text of organic law is written, being very difficult to read and understand it, first of all because of the new terminology (which does not exist in the rules for urbanism), and also due to the faulty way in which they are written and arranged on the page; in many cases, regarding the same situation there are serious contradictions from one paragraph to another. This aspect leads to arbitrary decisions and to interpretations, with possible different approaches to identical situations, depending on the employee required to make a decision about a situation.

16. The author of an urban documentation has the obligation to follow the current legislation when he sets urban rules – he does not have the right to invent or make additions to legislative elements, especially procedural ones that surpass the laws and norms of superior level. The makers of GUP Cluj-Napoca were informed of the problems mentioned above; a small part has been corrected, but a big part of legislative irregularities has been kept.

I find it inadmissible that due to the personal interest of some persons, other tens and hundreds (and in the future thousands) have to allocate time and money so they can gain their rights in an administrative way or in court.

I believe that the makers of GUP have civil and penal responsibility and they can be accused of work abuse in exercising the attributions specific to the elaboration of a documentation such as GUP. This also applies to the entities that approve/adopt documentations. If for the adoption of GUP Cluj-Napoca of December 2014 urgency was claimed due to the necessity not to exceed the deadline, this time there is no deadline. For this reason, I ask the Local Council of the municipality of Cluj-Napoca to analyse the documentation up for adoption carefully and responsibly and to demand the necessary changes from the makers of GUP; and if they refuse, then the Local Council should sanction de RLU and the faulty classifications of area and Territorial units of reference.

Written by

Associate Professor Doctor Architect Iancu Adrian

January 2016»

8. Epilogue

There has been no change regarding the proposals to modify the General Urban Plan of Cluj-Napoca since I submitted the last text in January 2016.

But there have been some evolutions in parallel, which are connected to GUP Cluj-Napoca.

In 2015 the chief-architect of Cluj County has been notified (because he did not realise it himself) that there are differences in the materials with the classification of territorial units of reference between the version that he had approved (posted on the site of the city hall until 3rd of December 2014) and the version that was adopted as the final form on the 22nd of December 2014. The approval from the County council is necessary for the validity of GUP. The chief-architect of Cluj County submits a request for a control to the State Inspectorate for Constructions (ISC), instead of taking measures himself (the law gives him the right to control over the city hall); thus, the inspectors of ISC (brought in from Bucharest and Brasov) do not notice the essential problem either (the approval of GUP in a version that has not been consulted by the population), but they believe that the Ordinances from the local council which approved the complaints filed by different people with regards to the new GUP should not be valid because they modify PUG without permits.

I'd like to mention that these Ordinances from the local council had the objective, firstly, to correct some mistakes (known in law terms as "material errors") of the makers of GUP who have drawn incorrectly some limits between the territorial units of reference, or have wrongly classifies some

areas. Most of the Ordinances from the local council were simply corrections for persons or firms that have been wronged by the makers of GUP.

Due to the fact that the chief-architect notified the prefect, he demanded for the Ordinances from the local council to be annulled. As a result, the prefect of Cluj County strikes against the people who have been wronged by the makers of GUP and who – after a lot of effort – have managed to obtain repairs through the administration. The Local Council of the municipality of Cluj-Napoca rejected the demand of the prefect to annul its own ordinances. As a result the prefect proceeded to court and asked that the Ordinances from the local council be annulled through judicial manner.

The request from the prefect to annul the Ordinances from the local council for fixing the mistakes of the makers of GUP started in autumn 2016 (aici ai pus 2016 dar probabil era alt an avand in vedere ca inca nu a fost toamna 2016). Upon seeing this attitude from the prefect, local authorities started rejecting all complaints filed by natural or legal persons, preferring for them to submit to court and to obtain a judicial ordinance that cannot be contested by anyone.

This is why during this time the courts that assess complaints from the domain of administrative legal department (besides the Courthouse of Cluj, there is a special unit) receive tens of complaints. The deadline for these processes will be at best the end of the year, but it is possible that they will go on for 3-4 years or even more.

9. Conclusions

Work such as the General Urban Plan for a locality is not just a documentation, it is a process. This process involves several stages: elaboration, approval, and implementation. As it can be seen from the material presented here the revision stage is added to the other stages and it involves changing the urban documentation following the complaints filed by persons who have been negatively affected by the stipulations of GUP or by the endeavours of the state institutes if they believe the current legislation has been disregarded. As I have shown, revision can be administrative or judicial. The reasons that lead to complaints (which can be called contestations of some parts of the General urban plan) are due to negligence and ill will from the authors of the urban documentation.

The General Urban Plan of the municipality of Cluj-Napoca is currently undergoing numerous changes that take place on two levels: administrative, through the initiative of the local administration to partially modify the General Urban Plan; judicial through the court proceedings started by petitioners displeased by the stipulations of GUP or by the prefect (as a representative of the central administrative authority). All these endeavours are lengthy, especially the court proceedings, so they will take a long time, a time that is impossible to predict.

The notes that I have made throughout time regarding the urban documentation had consequences – not as direct or complete as I had initially predicted -, or they will have consequences because a lot of court proceedings are based on these notes; and I estimate that there will be a stage where the notes presented in this text will be requested by the courts to assess the various complaints that have been filed.

10. References:

- [1] The Government Decree No. 525 from 27th June 1996 for approving the General Urban Regulation, published in the Official Monitor, Part 1, no.149 of 16th July 1996
- [2] Ordinance from the Local Council of the municipality of Cluj-Napoca no. 792 of 21.12.1999 for approving the General Urban Plan of the municipality of Cluj-Napoca
- [3] See HCL Cluj-Napoca no. 437 of 3rd December 2014, and <http://www.primariaclujnapoca.ro/userfiles/files/437%283%29.PDF>
- [4] See HCL Cluj-Napoca no. 493 of 22nd December 2014, and <http://www.primariaclujnapoca.ro/userfiles/files/493%283%29.PDF>
- [5] <http://www.primariaclujnapoca.ro/urbanism/regulament-PUG.html>
- [6] Guide regarding the methodology of elaboration and the frame-content of the General Urban Plan GP 038/99, P 038/99 approved by Order No. 13N from 10.03.1999 of Ministry of Public Works and Development of Territory
- [7] Order No. 536 of 23rd July 1997 for approving norms of hygiene and recommendations regarding the life environment of the population, published in the Official Monitor No. 140 from 3rd July 1997
- [8] http://www.primariaclujnapoca.ro/userfiles/files/20141203_1.PDF
- [9] Law 190 of 26.06.2013 regarding the approval of the Emergency Order 7/2011 for modifying and completing Law 350/2001 regarding the development of territory and urbanism, published in the Official Monitor no. 418 of 10th July 2013
- [10] Law 303/2015 for modifying art. 46 of Law 350/2001 regarding the development of territory and urbanism, and art. 2 of the Emergency Order no. 85 of 12.12.2012 for modifying paragraph (13) of art. 46 of Law 350/2001 regarding the development of territory and urbanism, published in the Official Monitor, Part 1 no. 898 of 03.12.2015
- [11] http://www.primariaclujnapoca.ro/userfiles/files/20141203_1.PDF.
- [12] These classifications break the right to property (given by the Romanian Constitution) when it comes to the attribute named “use”. It also disregards, by assimilation, the stipulations of Law 135/2014 published in the Official Monitor, Part 1, no. 753 of 16th October 2014, art. 2: “(9) the terrains listed in the land register as part of the category of courtyards – constructions, terrains which are the private property of natural or legal persons, can be classified as green areas, under the law, only after undergoing the procedure of expropriation following the legislation of the domain.: thus, by being classified in GUP as green areas these terrains are actually expropriated without going through the necessary legal stages.
- [13] This subject was reprised and detailed in the texts titled “Viewpoint”, as it can be seen below. By establishing “servitudes of public utility” the makers of GUP unjustly extend the areas destined to future expropriations, with no technical reason (such as a traffic study that would justify widening some streets).
- [14] This subject is detailed further below in the text titled “Viewpoint no.4”

[15] This is about a change and addition to Law 24/2007 by Law 47/2014 published in the Official Monitor, Part 1, no.185 of 22nd March 2012 that modifies art. 10, paragraph (3) by introducing the obligation to ensure at least 20 sqm. of green space per inhabitant. The stipulations of the Emergency Order no. 114/2007 published in the Official Monitor, Part 1, no. 713 of 22.10.2007, art. 2, paragraph (1) also apply: “the authorities of the local public administration have the obligation to ensure at least 20 sqm. per inhabitant of green space in the urban terrain, until 31st December 2010, and at least 26 sqm. of green space per inhabitant until 31st December 2013”.

[16] This subject is detailed further below in the text titled “Viewpoint no.4”

[17] This note has been implemented by the makers of GUP.

[18] All these notes have been confirmed by the numerous preliminary complaints filed by some land owners (natural or legal persons) that have been affected by the stipulations of the new GUP. In 2015, over 100 preliminary complaints have been filed, requesting changes for some stipulations of the GUP as a result of the fact that previously adopted legal documentations were no longer recognised, the terrains were affected by proposals for unrealistic or oversized streets or because some areas that had one-family houses turned into areas with apartment buildings with oversized urban indices.

[19] This observation has also been confirmed. The Urban certificates are very large, of at least 5 pages, usually 8 or 9 pages, and in many cases 10 pages. I have seen Urban certificates of over 20 pages.

[20] See this subject detailed in “Viewpoint no.4” B.7.

[21] See this subject detailed in “Viewpoint no.4” B.1. and B.2.

[22] See <http://www.primariaclujnapoca.ro/dezbateri-publice.html>, 25th January 2016 titled “partial change to the Local Urban Regulation approved by ordinance no. 493/2014 regarding the approval of the documentation “Update of the General Urban Plan for the municipality of Cluj-Napoca”, result of preliminary complaints and of the notes made by the General Board of Urbanism (in romanian: „modificarea parțială a Regulamentului Local de Urbanism aprobat prin Hotărârea nr. 493/2014 privind aprobarea documentației "Actualizare Plan Urbanistic General al municipiului Cluj-Napoca", urmare a admiterii unor plângeri prealabile și a observațiilor făcute de Direcția Generală de Urbanism „)