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THE LAW OF URBAN REHABILITATION, REGENERATION AND RENEWAL OF GALICIA, A NEW FOOD FOR THE ADMINISTRATIVE PILLATION OF BUILT HERITAGE

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Abstract: A brief analysis is presented on the effects of Law 1/2019 of April 22, on rehabilitation and urban regeneration and renewal of Galicia which, based on the direct application of part of its articles, covers the pillaging of built heritage both in areas of special urban protection as well as those of a rural nature, being able to be the basis of cultivation for other legislative texts that are, at the regional and national level, in the development phase.

The study aims to warn of the administrative plundering of the current architectural heritage, and this in order to obtain, among other things, greater administrative simplification, the revitalization of commercial activity, compliance with other technical regulations, etc...in short, the rehabilitation, renovation and regeneration of historic complexes without any, or scant, consideration of heritage value, and may even lead, if not to its destruction or loss, to a serious affectation.

This communication ends with the own and necessary reflection to state that these objectives are not contradictory with the maintenance and conservation of the existing built heritage, being fully feasible with them.

Keywords: Heritage, historical ensemble, urban development, special plan, expansive urbanism, conservation.

PRIOR CONSIDERATIONS

Prior to the development of the analysis of the legislative framework established by Law 1/2019, of April 22, on rehabilitation and urban regeneration and renewal of Galicia, (hereinafter Law 1/2019), a series of aspects must be addressed that, not trying to justify its development, they do help to situate it in a certain space-time and since these derive in a text whose application supposes, if not the destruction of the built heritage that make up our urban and rural historical complexes, yes

a serious affection to them and therefore to our memory and values.

THE CONCEPT OF PLUNDER

As a basis, and based on the description of the RAE, looting is understood to be the “*act of dispossession with violence or inequity*”.

The term and the express definition of looting in the field of cultural heritage seem to find no place until almost the end of the 20th century, when a large part of the architectural heritage of our cities has been affected either by profound alterations or by their abandonment.

It is Law 16/1985 of June 25 on Spanish Historical Heritage that in its 4th article exposes and defines the term plunder for the first time. Said concept does not appear in any of the autonomous texts that, under the protection of the different statutes, have subsequently assumed the competences in the management of heritage, thus maintaining its validity throughout the national territory. Beyond the specifications established in the legislation, it must be taken into consideration that the term itself tries to express the loss of cultural values that represent a people, and in the case at hand, their way of life, their adaptation to the environment, the territory and its decontextualization, elements that, as expressed in the eighth point of the Krakow Charter (Charter of Krakow, 2000), form and define the essence of historic cities and towns.

Lastly, the provisions of article 46 of our Magna Carta must be taken into account in that it establishes the obligation to guarantee, conserve and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and of the assets that integrate it.

However, the duty and requirement on the part of the public powers to ensure cultural heritage in general is clear, and this beyond its manifestation or not in legislative texts of an

autonomous nature.

THE HERITAGE-URBAN RELATIONSHIP

Throughout history, and with greater consideration from the end of the 19th century to the present, the relationship between built heritage and urban planning mechanisms, based on legal procedures, have always maintained a series of differences that have shaped the state. of the built heritage, both in urban and rural areas. With periods of greater or lesser harmonious relationship, they have never been able to fully fit in, perhaps due to the pride of one another, the public and social powers have not been able to keep up with their pace and establish a single road map that allows us to avoid the disastrous situation of our historical nuclei, both urban and rural with a traditional character.

The first regulations that tried to eliminate the looting suffered during the 19th century date back to 1924 with the Municipal Works Statute and Regulations. Said text did not specifically contemplate historical complexes, but tried to “satisfy needs of a hygienic, viability or ornamental nature”. The evolutionary process of the aforementioned statute materialized with the drafting of the Royal Decree of 1926 (Gaceta de Madrid, No. 227), which established for the first time the need to protect and preserve the artistic wealth of our cities. It makes clear the requirement regarding “*the towns and cities declared Artistic Treasures*” and that “*they must have specific and obligatory norms for the conservation of their monuments and in modern buildings of those elements that have the characteristic and distinctive character of antiquity, their originality and character*”.

The decree defines as historical complexes “*those that are part of the national artistic treasure, the monuments or part of them and the buildings or group of them, sites and places*

of recognized and peculiar beauty, whose conservation and protection is necessary to maintain the typical, artistic and picturesque appearance ...”.

The interest in cultural heritage in general, and specifically in historical sites, is evident with a new legislative framework, the Law of May 13, 1933 on Artistic Historical Heritage. It will be the first document that deals specifically with cultural heritage. This new order establishes for the urban complexes and the protected nuclei, the same conditioning factors and importance that the one given to the singular elements. That is to say, the term urban complex appears for the first time with almost the importance and range that we understand today. The city is, as a whole and in itself, a unit and not a group of singularities or independent elements with greater or lesser patrimonial importance.

The protective actions issued in the first quarter of the 20th century disappeared with the civil dispute and no general text or standard was established until the approval of Law 12/1956 of May 12 on land and urban planning (hereinafter Law 12 /1956), a text that nothing advances on historical ensembles. The new legislative framework abandons the existing city, the historic city, to its fate and fosters an expansive urban development in which, in addition, it is favored by a series of official funds, publicly promoted housing, and financial aid incentives for the creation of new urban fabrics derived from the new buildings. This dark and empty period separates, in some cases, urban development from historical and traditional complexes, a matter that will allow many of them to remain, even if abandoned, in their original state. On the contrary, many others will disappear as a result of an indiscriminate destruction of the building stock. The consequences of this expansive urbanism are clear, forceful and difficult to solve, because despite the time that

has elapsed, its foundations are still evident today. The effect of this urban development based on excessive growth and on the premise of obtaining a benefit based on the resulting capital gains, still persists, and strongly, this being by far the cause of the failure of many of the rehabilitation policies that were created with later. Anecdotal and demonstrative of the null importance of built heritage is the fact that the only mention made of historic cities in said law is the express reference to the obligation to draw up, as a figure of organization and protection, a Special Plan (López,1990).

The legal and urban planning of the historical complexes remains in the most absolute penumbra until the creation of Law 16/1985 of June 25 of the Spanish Historical Heritage. The new legislative framework establishes, after little more than fifty years, a more specific legal regime that captures the first reflections that are taking place on the state of historical complexes and cities. A more exact definition is sought for certain terms, among them the historical ensemble whose concept is specified in *“the grouping of real estate that forms a settlement unit, continuous or dispersed, conditioned by a physical structure representative of the evolution of a human community for being a testimony of its culture or building a use and enjoyment value for the community”* (Ley 16/1985, Article 15). The articles, by introducing terms of social value, clearly state that the rehabilitation process is not established only towards the building stock but towards an improvement in the quality of life of the society that inhabits them and does so as a whole, as a unit and not in an individualized way, because it understands that any individual action affects the whole.

BACKGROUND OF LAW 1/2019 OF APRIL 22, ON REHABILITATION AND URBAN REGENERATION AND RENEWAL OF GALICIA. ANALYSIS AND REFLECTIONS

Law 16/1985 on Spanish Historical Heritage is the consequence of a renewal process, but also of reflection that occurs in Spanish society not only at a social or political level, but also from a heritage and urban point of view, after a period dark and authartic politician. While in European countries this reflection on the state of existing cities occurs in the mid-fifties (Astengo. 1958) and early sixties (Loi 62-903. 1962. Known as Loi Malraux) in our country this process It does not start until the decade of the eighties.

The drafting of a series of rules under Royal Decrees will try, with greater or lesser effectiveness, to stop the deterioration of historic centers and existing cities, based above all on the provision of economic incentives for the rehabilitation of, in a first term, existing buildings in the historical complexes, and, later, the regeneration of public spaces, the renovation of infrastructures, and finally paying attention and taking into account the social aspects of its inhabitants etc..., the latter established around the areas defined as Comprehensive Rehabilitation Areas (ARI), and forming part of them, “urban centers and historic cities declared or not, as assets of cultural interest or similar category of regional legislation ...” In general and until the first decade of the 21st century, the recovery of deteriorated heritage is sought, providing buildings with proper habitability, infrastructures and endowments.

The rehabilitation process fostered by the continuous series of royal decrees culminates with the drafting of Law 8/2013, of June 26, on Urban Rehabilitation, Regeneration and Renewal, precursor of Law 1/2019 of Galicia. The resulting new legal framework

is supported to no lesser extent by the 2008 Land Law, Sustainable Economy Law 2/2011 and Royal Decree 8/2011 of April 28, which establishes measures for the protection of critical infrastructures. This new text tries to enable the necessary legal instruments for the implementation of new policies and mechanisms that encourage the participation of private capital in the rehabilitation process. The State cannot be a benefactor entity for life and to make actions in historical complexes attractive, laws are modified in order to allow increases in building area, exemption from transfers, etc....conceivable criteria in areas or spaces not built. It is about transferring the ideas of expansive urbanism to the historic city. A serious mistake, a chimera, since this means taking a step back since it is based on obtaining benefits or capital gains from the rehabilitation process through increases in uses, buildability, uses, etc.... values that in an area already built cannot materialize either due to an excess of the existing housing market or due to the protections to which said building stock is subjected.

CURRENT LEGISLATIVE FRAMEWORK

Galicia, like the rest of the autonomies, and by virtue of the established statutory powers, has assumed all the responsibilities that correspond to the ordering of its patrimony. In this regard, it has as a legislative framework Law 5/2016 of May 4 on the cultural heritage of Galicia (hereinafter Law 5/2016), a text that itself manifests itself with many similarities to the rest of the regional regulations.

Beyond what is established in the aforementioned Law, the legal framework is completed with the articles that are developed in Law 2/2016 of February 10 on Galician soil (hereinafter Law 2/2016) and in Decree 143/2016 of September 22, which approves the Regulation of Law 2/2016 of February 10 of the

land of Galicia (hereinafter Decree 143/2016), and specifically, the corresponding articles, in all its senses, to the special protection plans.

LAW 1/2019 OF APRIL 22, ON REHABILITATION AND URBAN REGENERATION AND RENEWAL OF GALICIA. ANALYSIS AND REFLECTION

INTENTION, JUSTIFICATION, OBJECTIVES

The explanatory statement of the law states the intention “to adopt different measures that allow tackling the current problem of urban spaces and preserve them” and “inhabit them, occupy the spaces and generate activity”.

The legislative text is based on a basic fact: “the rehabilitation and reuse of abandoned or degraded residential spaces play a fundamental role in housing policies as an efficient, sustainable and future-proof solution when it comes to responding to the needs of housing of the population, to preserve the built heritage and reduce the impacts on the environment”.

For this, the law establishes as its main objective “based on knowledge of the urban fabric and its evolution, through the processes of rehabilitation, regeneration and renovation, to preserve the rich building heritage” and also abounds in the need to maintain its characteristic uses. and its population trying to attract new generations that settle in the renovated spaces.

In order to achieve the stated objectives, the implementation and promotion of equipment, the revitalization of commercial activity, the renovation of quality public spaces, as well as establishing a series of economic incentives for the rehabilitation process are intended, for which public intervention is fundamental.

Finally, the law, by way of conclusion, intends that all these actions are carried out

conserving the existing architectural heritage.

NEW LAW OLD MISTAKES

The obvious failures of the different rehabilitation policies carried out to date do not seem to have been taken into consideration. If the previous points manifested the problem that the possible solutions based on lucrative uses and increases in capital gains and buildability had entailed, the new legal order reiterates them again. This establishes the need, as a prerequisite for action in the urban environment, for a distribution of charges and benefits, that is, a process of equidistribution similar to that established for unbuilt land.

INTERFERENCE IN THE OWN LEGISLATIVE FRAMEWORK

Despite the intentions indicated, as well as the justification given and the objectives established, the legislative text supposes a clear modification of the protection of all the built stock that is cataloged in all its grades, with two exceptions, those declared according to the Galician Cultural Heritage Law, such as Assets of Cultural Interest, BICs and those others with a degree of comprehensive protection. This fact also supposes a clear interference in the powers that are not proper to the new text, since it interferes with the precepts of the Galician Heritage Law, which itself defines and provides for the protective framework of cultural heritage, in all its areas. and in a detailed way, establishing the intervention model according to the different degrees of protection and in all cataloged assets. Excluded from this criterion are those areas that fall under the urban framework established by a Special Plan, provided that it is adapted to said cultural heritage law and with the exceptionalities established therein for the purposes of coordination and non-interference.

Given the recent approval of the legislative

text, few are the areas delimited by a special plan drafted under the protection of said law. At this point, it must be noted that currently Galicia, as recorded in the Cultural Statistics Yearbook (Ministry of Culture and Sports, 2021), has 50 historical complexes, of which 25 are declared urban historical complexes, and of these, 8 are not. they have a specific planning figure of some kind and the rest have a Special Plan not adapted to their own law such as that of Cultural Heritage (Xunta de Galicia, 2022). The lack of a specific norm applied to a territorial area without it being adapted to the new normative framework, allows Law 1/2019, depending on the provisions and the articles that are developed therein, to order accordingly. almost the entire cataloged building stock directly. It is a substitution of the minimum protection regime that the law that is proper to it establishes, even more so when there is a lack of a specific protection figure such as that of a Special Plan. In this situation are found not only the large historic urban centers such as Pontevedra, Ourense, Lugo, La Coruña, Ferrol and Santiago de Compostela, the latter classified as World Heritage since 1985, but all those smaller sets, but with a high patrimonial value for being located around the Camino de Santiago, in addition to the villas that appear on the list of Historic Artistic Ensembles. The interference of the new regulatory text is clearly demonstrated when it is stated with total impunity that the determinations of the law will prevail even over those that, if they exist, are established in a special plan or in a catalog of the area or building affected (Law 1 /2019, Article 40-2), specific figures and created for a certain element or elements and not with the general nature of the law.

In addition to the manifest interventionism on the specific and proper Law for cultural heritage assets, the new legislative text alters the provisions of Law 5/2016 on Land and the

regulation that develops it, clearly abolishing the provisions in which it is established that the ordering figures in the special protection sets will be the Special Plans (Law 2/2016, Articles 70, 71; Decree 143/2016, Articles 178,179), and the catalogs contained therein.

THE ADMINISTRATIVE LOOTING

Beyond the demonstrated interference, it remains to express the “contempt” that involves not having any consideration for buildings with other degrees of protection such as structural or environmental.

For Law 1/2019, buildings with a degree of structural or environmental protection are dispensable and as such can be modified and altered without taking into account that the variation of a part also implies a change in the whole, in the whole. itself and especially when this premise is carried out on urban or rural historical ensembles. The permissiveness of the law is such that it authorizes demolitions and emptying based on requirements of an economic, technical or functional nature, even based on the requirements of technical standards such as Royal Decree 314/2006, which approves the Technical Code of the Building, Accessibility Law 10/2014 of December 3, or Decree 29/2010 of March 4, which approves the habitability standards for Galician homes, which in many cases allow and accommodate alternative solutions and exceptionalities in compliance. Proof of this is the authorization of bioclimatic devices or devices that allow energy savings on facades, the authorization of elevators in arcades, etc... (Law 1/2019, Article 13)

In continuity with the above, the confusion and permissiveness shown when indicating that it is perfectly possible to replace the listed buildings with a level of environmental protection, and even structural in which there are elements that by themselves have a singularity, must be repaired. and manifest

exceptionality (Law 1/2019, Articles 41,43,44). The provisions of various articles show ignorance of the concept of built heritage, and this is palpable when indicating that any action inside a building will be allowed as long as the image of the building is respected. It matters little because its content, the existence or not of some element of value, all this is subordinated to the image of the building. In addition to the provisions indicated, it must be noted that their wording is confusing, since it establishes the possibility of modifying the image of the building, its façade, provided “that a remodeling or alternative construction is planned with a design that respects the character of the property and the protected environment, and provided that it does not affect facades or singular elements specifically protected”. The defenselessness of the built heritage is ensured before such criteria and with it the legal uncertainty due to the lack of an interpretation of the norm with fair clarity.

The Law, abounding in what has already been expressed, supposes a serious attack against one of the most important patrimonial elements, the parcel and therefore in the configuration of the urban fabrics of medieval cities and in the traditional historical complexes of a rural nature.

The possibility of modifying the existing plot (Law 1/2019, Article 43) grouping up to three plots in such a way that other regulations or impositions are complied with, such is the fact that every home must have a minimum of three rooms for living room and two bedrooms, or allow, without limit, joining the ground floors of a group of buildings, suppose, if applied, a series of consequences that the legislator has not taken into consideration, since it implies the destruction of the original plot of the city. In this sense, it is worth mentioning the provisions of the Washington Charter of 1987 for the conservation of historic cities and historic urban areas and whose text,

accepted and signed by the EEC and therefore by the Spanish state, which indicates that “The values to be conserved are those of a historical character of the population or of the urban area and all those material and spiritual elements that determine its image, especially the urban form defined by the plot and the plot, the relationship between the various urban spaces, buildings, free green spaces the shape and appearance of the buildings (interior and exterior), defined through their structure, volume, style, scale, materials, color”, values all of which are totally ignored by the law, despite indicate in the statement of reasons the total adequacy to the letters of restoration and international conventions for the conservation of cultural heritage.

The modification of the plot based on the fact of complying with certain technical conditions lacks basis, since the different documents to which reference can be made, such is the case of technical codes or habitability and accessibility standards, have in their I develop elements that make it possible to make the established parameters more flexible and even exempt, and this is based on the protection of built heritage, in such a way that any action on a building can be adapted to it and to the degree of protection available to it, protecting it from thus the heritage it represents.

CONCLUSIONS

As an initial basis, it is worth reflecting on whether Law 1/2019 is drafted in order to circumvent those regulations that represent an obstacle to the application of rehabilitation policies based, as already stated, on obtaining capital gains through increases of buildability, in the changes of uses, etc... Fundamentals that are typical of the expansionist urbanism

promoted in the Land Law of 1956 and that were also contemplated in Law 8/2013 of June 26 where it was about establishing an instrumentation with the precise legal basis that allows the intervention and participation of private capital in the rehabilitation processes in line with the decrease in public contributions. In this sense, Law 1/2019 goes several steps further and to this end, not only Law 2/2016 on Galician Land and even Law 5/2016 on cultural heritage are altered or modified, which is no longer a contradiction in based on the exposition of the analysis carried out, but also an administrative plunder of the architectural heritage by allowing devastating actions on the built complexes that eliminate fundamental and unique parts of the built park.

The analysis of Law 1/2019 shows a clear contradiction with the foundations, objectives and intentions that are related in its preamble and the articles that it develops. This fact forces us to reflect on what the lawyer understands by the built heritage and its conservation when it is affected in such a way.

Although it is true that our cities and historical complexes require actions for better habitability, accessibility and provision of infrastructures and services, these must not be carried out at the expense of eliminating current heritage, even more so when there are multiple examples, both individually and as a whole, who have been able to very successfully resolve the coexistence between what is “necessary” and what is “protected”, and this, and to a greater extent, without emptying the city or each building that composes it of content, without making our nuclei historical, urban or rural, simple cinematographic decorations.

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