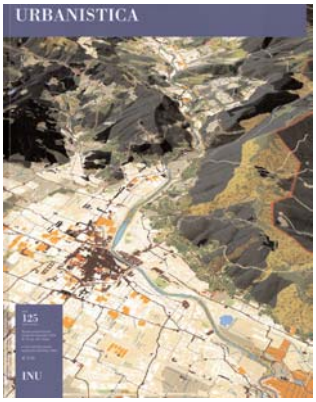

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The City Statute: new avenues for urban management

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The process of reconstructing the democratic order in the country, which began in the Eighties, has been translated, through the demand for popular participation, into the formulation of local urban policies. This context has favoured the birth of a law targeted on the urban question, i.e. Federal Law no. 10,257/01, called the City Statute. This law regulates articles 182 and 183 of the Federal Constitution of 1988 and is organized in five chapters: general guidelines, urban policy instruments, Master Plan, democratic management of the city, and general provisions.
The first chapter establishes the objectives of the law and consists in defining provisions aimed at regulating the use of urban property in favour of the collectivity, of security, of the welfare of citizens and of environmental equilibrium.
The second chapter lists the instruments to be used to reach the objectives set out, and herein lies the main innovation, as these instruments enable the municipality to control land use more closely, with a view to a fairer distribution of the benefits and the burdens of the urbanization process. Chapter III is dedicated entirely to the Master Plan: this ceases to be a document of an exclusively technical character and takes on the function of the main urban policy instrument.
Integrating political, economic, financial, social and territorial factors, the Plan becomes a space of debate on the strategies of intervention in the city, in which the direct participation of citizens, stimulated by the public powers, becomes obligatory. Chapter IV deals with the democratic administration of the city and calls for direct citizen participation through the use of various instruments and methods, such as public sessions, referendums, and popular initiatives of draft laws. It also foresees the institutionalization of the management of the participatory balance sheet, with public discussions for the annual balance sheet, approved by the municipal chamber. Chapter V deals with general provisions such as the setting up of consortiums to facilitate the acquisition of underused buildings, penalties for not respecting the law, and the obligation for municipalities with more than 20,000 inhabitants in the urban area or which belong to metropolitan regions to approve their respective Master Plans within five years.

Principles and innovations

The City Statute was approved in June 2001 after a long period of gestation (about eleven years). To bring about the social function of the city, the new law establishes that real estate must be subordinate to the collective interest, implying greater control of the occupancy of urban properties traditionally used for speculative purposes. In regulating ownership, the City Statute takes on the character of urban reform capable of positively influencing the elements that generate marginal areas which characterize the city. In requiring the application of controls to the use of urban properties to the advantage of the collective good, this the first law to bring into discussion the exercising individual rights vis-à-vis the needs of society. According to Oliveira (2001): "with this new principle a fresh point of reference is reached in this sphere of public law, introducing social justice into the use of properties and especially in the use of urban properties. It is the state, in its municipal sphere, that has to indicate the social function of property and of the city, seeking the necessary balance between public and private interest in urban territory". Another innovating principle is the importance of democratic administration, which guarantees the participation of the population in decisions of public interest, including the formulation, execution and procedure of formulating plans, programmes and projects of urban development. The new law ratifies that popular participation is obligatory in the decisions of public administration, so that it is no longer optional. The just distribution of benefits and burdens that derive from the urbanization process is another important principle contained in the City Statute. With this principle, as Oliveira observes (2000) "it is sought to guarantee that all citizens will have access to the services, to urban facilities and to the improvement works brought about by the public authorities, going beyond the present situation characterized by concentration and investments in given areas of the city while other areas only come in for the burdens".
The innovations brought in by the City Statute may be grouped in three areas: regulating urban planning instruments targeted on land use control; providing the opportunity for the land regularization of urban possessions; establishing urban management strategies foreseeing the direct participation of the citizens.
In relation to the first area, the Statute proposes urban planning instruments which, recognizing the effects of urban regulation in the logic of the real estate market, tend to repress speculation on lands and separate the right of ownership from the right to build defined by a specific urban provision.
The use of these instruments can mean incisive action in structuring the city, guiding expansion towards more consolidated areas from the standpoint of infrastructure, but not densely populated, so as to reduce pressure on the peripheral areas or those that are environmentally fragile. This procedure, moreover, could have an effect of fairly distributing the benefits and burdens of urbanization on the real estate market, overturning the practice of favouring the high-income population dwelling in privileged areas of the city.
Regarding the second area, the Statute proposes mechanisms that facilitate access to ownership or to concession of the land for a large portion of the population living in unauthorized settlements, generally located in the urban peripheries. The third area regards making democratic discussion obligatory in the decision-making phase. Without doubt this innovative obligation will cause new methodologies to be established for city administration, in the sense of broadening the space enjoyed by citizens in the decision-making process.
The City Statute ratifies national, regional and state development plans as instruments of urban policy in the metropolitan regions, in the built-up areas and in the microregions, as well as for the planning of municipalities.

Prospects of the new legislation

Although it is clear that the law alone cannot resolve all

urban problems, the Statute opens up possibilities of concrete measures in the field of social exclusion which characterizes Brazilian cities, offering the municipalities a whole range of instruments, apart from a conception of urban planning and management of participatory type which facilitates the operative translation of the constitutional principle pertaining to the social function of urban property. With the City Statute, as Falcoski states (2000) the objective of public policies of planning "to create more dynamic instruments facilitating the actions and decisions of the actors for the purpose of obtaining a balanced urban structure within the principles of justice, equity and social-spatial and environmental quality" is recovered. After waiting for eleven years, a number of questions crop up again inside the municipal administrations, and also elsewhere: why does the Statute reawaken so much interest and cause so many discussions? What are the main impacts deriving from the implementation of the new law? Does it have anything new for urban policy, and if so what?

To answer these questions it is important to remember that the development process of the city in Brazil is marked by social-spatial segregation: the high-income population lives in privileged areas and the less moneyed class lives in the periphery and, generally, under unauthorized conditions. Although many municipal administrations operate with legislative and planning instruments, this model of excluding city still remains. Faced by this situation it is logical to wonder why another law should be needed if a fairly solid legislative basis already exists. Truly speaking the expectation, in relation to the Statute, is due to the fact that so far the legal structure used for urban planning purposes has not interfered with the question of land ownership, and therefore has had minimum effects. The Statute, instead, as an instrument of urban policy, sets limits to land ownership. The law specifies in detail the conditions for achieving the social function of ownership in accordance with what is laid down by the federal constitution, establishing sanctions for failing to reach the objective. In this way the principle of the social function of ownership takes on an operational legality. This is the novelty of the City Statute: the instruments foreseen, in isolation or all together, must guarantee the achieving of the goal. In this sense the new law goes into the merits of urban questions and does not limit itself to dealing with the consequences thereof, which is what has happened so far. Although drawing up the Master Plan is a common practice, this has not effectively influenced the control of land revenue, the basis of property speculation. For this reason the implementation of the Statute is of great impact, as it becomes possible to influence the rules of the market of urban areas, controlling also the possibilities of speculation. Another great innovation of the Statute, and perhaps the main one as it establishes a new city management practice, is the role attributed to organized civil society. The Statute makes popular participation obligatory, making it a requisite for legitimizing and legalizing the acts of the political power. The non-application of this rule implies sanctions for the public administration, in a perspective hitherto non-existent. The need for society to participate in the city management process in reality determines the institution of a public, not a state, space for controlling the exercise of public power.

Implementing the instruments contained in the Statute must form part of a co-ordinated urban policy, with clear aims and properly defined times, avoiding isolated actions that can guarantee improvements for only small parts of city territory. Cymbalista (2001) summarizes the main results of the application of the City Statute in quite a clear way: "democratization of land sales, densifying the more central, best-served areas, also reducing the tendency to occupy more distant and environmentally more fragile areas, and regularizing the immense unauthorized settlements. From the political standpoint, the popular districts benefit insofar as an adequate and legal urbanization of the poorer settlements begins to be regarded as a right and ceases to be the object of political struggles between councillors and executive authority". In fact, while the effects of some of these results would already be sufficient to generate substantial transformations in Brazilian cities, the results as a whole strengthens the possibility of this new management practice for a more balanced urban development. Starting from the making known and discussion of the City Statute, the population itself can call for its implementation, obtaining a legal basis for insisting that the municipal shall carry out the city's social function. Considering the situation of social exclusion that characterizes Brazilian cities, in a context of privatizing the public services and cutting social costs, a reflection on the essence of the City Statute becomes an absolutely essential task. It cannot be forgotten that the Statute is only a law, and for this reason may be regarded with scepticism as far as its real incidence is concerned, bearing in mind the contrast between urban reality and body of laws that exist in the town planning and environmental sphere. Such being the situation, the role that the Statute has to exercise, and which differentiates it from other laws, is that of stimulating discussions on urban reform, on the bases and principles of the city's social function. The approval of the City Statute placed in the hands of the municipal administrators a legal structure that can generate a mobilization targeted on social transformation. The administrations may or may not use it.