

## **Regulation of spatial development in Switzerland and the Canton of Geneva**

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The aim of this article is neither to analyse the efficiency of the Swiss legislation nor to compare it with Hungarian or EU legislation but simply to present to the Hungarian public the legislation on spatial development at a federal and cantonal level. This should give the Hungarian reader the opportunity to understand the complex multilevel structure of Swiss legislation on this specific issue.

### *Federal legislation*

Switzerland, a small country, is conscious of the fact that its territory is restricted. In fact, if we consider the mountainous regions -which are scarcely inhabited due to its inhabitability for climatic and geographic reasons- Switzerland is even more limited for habitation and urbanisation. The result of which is that it is a specific region, the relatively flat Swiss Plateau, which has the densest population and which is the only important agricultural region of the country. The plateau is between the Alps and the Jura mountains and Switzerland possesses an important chunk of both of these two important European mountainous chains resulting in a reduced agricultural potential.

One of the advantages of Switzerland is that it has a vibrant and developing economy due to its neutrality and banking system, stable currency, high-tech industry and geographic beauty which results in high development potential with a growing population that has reached 8 million this year. The problem is that its territory remains reduced with its geographic limitations.

As in all federal states the rule is that federal laws can affect cantonal ones and Swiss legislation contains binding legal regulations at three levels. However there is a difference between public and private sector. State or public building legislation addresses legal relationship between citizen

and state, while private building laws govern legal relationships between individuals (contracts and zoning laws).

There are four essential legislation and regulation areas to Swiss settlement policy:

- “– land-use planning (cantonal structural planning, municipal land-use policy, reorganisation of land, access, information, citizen participation);
- building legislation (building and land-use regulations, building permits, regulations concerning health and safety);
- nature and national heritage protection (nature protection, protection of monuments, archaeology);
- environmental protection (noise, air, soil, water, environmental compatibility).”<sup>1</sup>

### *Federal Spatial Planning*

The Confederation has codified in 1979 spatial planning (*Loi fédérale sur l'aménagement du territoire - Raumplanungsartikel*) called also LAT. This law leaves a certain margin for the cantons and communes and thrives to make them concord at all three levels.<sup>2</sup> It also promotes coordination between cantons in the field of land use and spatial planning.

This law has five core goals that take into consideration the moderated utilisation of soil. All three levels have to support the following spatial development efforts to:

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<sup>1</sup> *Human Settlement in Switzerland Spatial Development and Housing*, Volume 78 Housing Bulletin, Federal office for Housing, Grenchen, 2006, p. 24.

<sup>2</sup> Loi fédérale sur l'aménagement du territoire (Loi sur l'aménagement du territoire, LAT)1 du 22 juin 1979 (Etat le 1er juillet 2011).

**Art. 2** Obligation d'aménager le territoire

1 Pour celles de leurs tâches dont l'accomplissement a des effets sur l'organisation du territoire, la Confédération, les cantons et les communes établissent des plans d'aménagement en veillant à les faire concorder.

2 Ils tiennent compte des effets que leurs autres activités peuvent indirectement avoir sur l'organisation du territoire.

3 Les autorités chargées de l'aménagement du territoire veillent à laisser aux autorités qui leur sont subordonnées en cette matière la liberté d'appréciation nécessaire à l'accomplissement de leurs tâches.

- a) Protect the natural basis of life such as soil, air, water, forest and landscape,
- b) Create and maintain a harmonious built environment favourable to the needs of the population and the economy,
- c) Favour the social, economic and cultural life of the diversified regions of the country and promote a judicious decentralisation of urbanisation and the economy,
- d) Guarantee sufficient sources of stocks in the country,
- e) Assure the defence of the country.<sup>3</sup>

Then there are a certain number of obligations relating to spatial development. The higher authorities elaborating spatial development have to give liberty of appreciation to the lower level authorities to accomplish their tasks which are a typical aspect of federalism. Which are the principals to be respected?

First the preservation of the landscape:

- a) Reserve good quality land for agriculture,
- b) See to that constructions integrate the landscape,
- c) Allow the lake and river sides to be accessible to the public,
- d) Conserve natural sites and territories for relaxation,
- e) Maintain the varied functions of the forest.<sup>4</sup>

Those territories that are reserved for habitation and the economy should respond to the needs of the population, but are limited in space. It is advisable to mind a certain number of aspects such as:

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<sup>3</sup> **Art. 1** Buts

1 La Confédération, les cantons et les communes veillent à assurer une utilisation mesurée du sol. Ils coordonnent celles de leurs activités qui ont des effets sur l'organisation du territoire et ils s'emploient à réaliser une occupation du territoire propre à garantir un développement harmonieux de l'ensemble du pays. Dans l'accomplissement de leurs tâches, ils tiennent compte des données naturelles ainsi que des besoins de la population et de l'économie.

<sup>4</sup> **Art. 3** Principes régissant l'aménagement.

- a) Habitation and work place should be spread in a sensible way and connected with transport networks,
- b) Preserve, as much as possible, the inhabited zones from nuisances such as pollution and noise,
- c) Maintain or create cycling lanes and pedestrian ways,
- d) Enable the conditions for supplying goods and services,
- e) Keep many green zones among constructions.<sup>5</sup>

Eventually the law stipulates that the constructions should be determined by rational criteria:

- a) to have in mind the specific needs of the region and avoid chocking disparities between them,
- b) to facilitate the access of the population to establishments such as schools, leisure centres and public services,
- c) to avoid or maintain, in general, the negative effect that these buildings would have on the natural milieu, the population and the economy.<sup>6</sup>

This last paragraph of Article 3 shows that Switzerland is a country concerned by ethical and egalitarian arguments of not showing ones wealth and limiting disparities, at least visibly. We can also note that the preservation of nature and the economy are on the same level of importance. It is a well balanced formula between the two that can create a comfortable environment for humans.

Even if the Confederation gives the freedom to the cantons to set up their spatial planning, it keeps the right to “detailed legislation in areas of crucial importance, i. e. deciding where constructions are or are not to be allowed”.<sup>7</sup>

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<sup>5</sup> Art 3.3.

<sup>6</sup> Art 3.4.

<sup>7</sup> *Human Settlement in Switzerland...*, Housing Bulletin, Volume 78, Federal office for Housing, Grenchen, 2006,p. 25.

One of the big issues of these years has been the problem of second homes (holiday houses). In 2000, second homes represented 12 % of all residential housing in Switzerland; in cantons where the main industry is tourism it has reached 30% and in some ski resorts such as Verbier, Flims or Adelboden they have exceeded 50%. “Since 1980 the number of second homes has risen sharply and is growing faster than that of first homes.”<sup>8</sup> Following alarming analysis from the Federal Office of Spatial Development measures had to be taken and a plebiscite has been proposed this year through the initiative of Helvetia Nostra civil society lead by the ecologist Franz Weber. The initiative has gone through and the vox populi has voted for a ban on second home constructions in communes where more than 20% of the homes are secondary residences. The text says: “A residence that is not used all year by a person resident in the commune or that is not used for lucrative activities or education is a secondary residence”. However owner can still convert their second homes into their permanent residence if they wish to move there permanently.<sup>9</sup>

### *The Cantonal Structure Plan*

The most important instruments provided by the spatial planning law are cantonal structure plans, followed by the municipal land-use policies (*Nutzungspläne*) outlining how owners may use their land and eventually the federal concepts and specific plans.<sup>10</sup>

The Confederation awaits from all cantons a structure plan. In art. 8, there are minimal requirements: how to coordinate activities that have an effect on the organisation of territory, designation of territories where special measures have to be taken to maintain an equilibrium between principal and secondary homes, finally measures to be taken to limit new secondary residences, to promote hotels and principal residences at acceptable prices, and to improve the occupancy of secondary homes.<sup>11</sup> As we have seen, new legislation has been voted on second houses this year which limits even more this aspect.

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<sup>8</sup> *Human Settlement in Switzerland Spatial Development and Housing*, p. 26.

<sup>9</sup> «Toute résidence qui n'est pas utilisée toute l'année par une personne domiciliée dans la commune ou pour les besoins d'une activité lucrative ou d'une formation est une résidence secondaire» Patrick Chuard. *Le Matin*, corrected 22.08.2012. <http://www.lematin.ch/suisse/Residences-secondaires-le-glas-sonnera-le-1er-janvier-2013/story/14676005> (15. 9. 2012)

<sup>10</sup> *Human Settlement in Switzerland...*, p. 25.

<sup>11</sup> 2 Ils désignent les territoires où des mesures particulières doivent être prises en vue de maintenir une proportion équilibrée de résidences principales et de résidences

When cantons have a row they can ask for a conciliatory procedure:

“Art 12.

1 When the Federal Council cannot approve a Cantonal Structure Plan or a fraction of it, it launches a procedure of conciliation after hearing the different parties,

2 During the conciliatory procedure, it is forbidden to intervene in order to act unfavourably on the outcome of the discussions,

3 When there is no agreement the Federal Council statutes three years after the opening of the procedure.”<sup>12</sup>

### FIG 1. Overview of planning instruments and legislation <sup>13</sup>

Source: Schweizerische Vereinigung für Landesplanung (VLP-ASPAN)

#### Most important planning instruments:

<b>Federal</b>	Concepts and specific plans
<b>Canton</b>	Cantonal guiding plan
<b>Region</b>	Regional guiding plan
<b>Municipality</b>	Municipal guiding plan, land-use plans (global and specific)
<b>Legislation:</b>	
<b>Municipal level</b>	
Building and zoning ordinances	

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secondaires. 6

3 Les mesures à prendre visent notamment les buts suivants:

- limiter le nombre de nouvelles résidences secondaires;
- promouvoir l'hôtellerie et les résidences principales à des prix abordables;
- améliorer le taux d'occupation des résidences secondaires. 7

<sup>12</sup> **Art. 12** Procédure de conciliation

1 Si le Conseil fédéral ne peut pas approuver un plan directeur ou une partie de celui-ci, il ordonne l'ouverture d'une procédure de conciliation après avoir entendu les intéressés.

2 Il interdit pour la durée de la procédure de conciliation toute intervention de nature à influencer défavorablement sur l'issue des pourparlers.

3 Lorsqu'aucun accord n'est intervenu, le Conseil fédéral statue au plus tard trois ans après l'ouverture de la procédure de conciliation.

<sup>13</sup> *Human Settlement in Switzerland...*, p. 28.

**Cantonal and Regional level**

Planning and building law

**Federal Level**

Federal Constitution

*The case of Geneva*

One of the big concerns in Geneva is the constant clash of interest between an ever developing metropolis and the declassification of agricultural and natural zones to build new housing and industrial infrastructure. The other great challenge is the greater Geneva Agglomeration that is a trans-border agglomeration between Geneva and Vaud cantons and France. In this paper we will not study the Geneva - France case as it will be covered elsewhere in this handbook.

The Cantonal Structure Plan is essential for intercantonal and transborder collaboration. It offers the framework for local spatial development and the activities which are the competences of the communes. It is an indispensable tool for inter-communal collaboration.<sup>14</sup>

The Geneva 2015 Structure Plan differentiates from earlier ones (1989) because it has a trans-border and a sustainable development dimension. In the Plan there is the Concept of Cantonal Spatial Development which defines the principles and the objectives of special development and there is the Cantonal Structure Scheme that explains the conditions of spatial development policy. The Structure Plan is an evolutionary document which must adapt to the circumstances and evolution of events.

The concept has five main chapters: Social and economic framework, Urban space, rural and natural spaces, transport and communication networks, and protection of the environment and management of resources.

Moreover the actions of the Structure Plan can be grouped in five axes :

- Differentiated urbanisation
- connexion between transports and urbanisation

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<sup>14</sup> [http://www.geneve.ch/plan-directeur/asp/consult\\_concept.asp?num=41](http://www.geneve.ch/plan-directeur/asp/consult_concept.asp?num=41)

- a network of green spaces
- multifunctional rural space
- and PAC perimeters.

The PAC perimeters are sectors that are highly important for the future (such as an airport, a train station) and need a special dialogue between actors, some of which need trans-border dialogue.<sup>15</sup>

The Canton of Geneva has launched a new Structure Plan for 2030 and the canton has to concert with the population, the economic and social partners, the communes, the Canton of Vaud and neighbouring France, eventually with other Cantons and the Confederation before setting the final goals.<sup>16</sup>

#### Sustainable development

Geneva has also set up a communal “Agenda 21” inspired by the Earth Summit of Rio in 1992 as Switzerland has committed itself to Agenda 21. In 1999 Switzerland wrote sustainable development into its Constitution and in 2002 its government adopted a strategic paper which defines ten areas of action and twenty-two specific policies entitled the “Sustainable Development Strategy” which means involving public authorities at all three levels.<sup>17</sup> The Confederation also committed itself to “future developments in spatial planning and housing”. The Swiss government’s strategy covers three key areas: the Development of Urban Areas and the Built-Up Environment, Social Cohesion and the Environment, and Natural Resources – in

<sup>15</sup> [http://etat.geneve.ch/dt/amenagement/lignes\\_force-686-5093-6543.html](http://etat.geneve.ch/dt/amenagement/lignes_force-686-5093-6543.html)

<sup>16</sup> [http://etat.geneve.ch/dt/amenagement/projet\\_pdcn\\_geneve\\_2030-686-4369.html](http://etat.geneve.ch/dt/amenagement/projet_pdcn_geneve_2030-686-4369.html)

[http://www.geneve.ch/plan-directeur/asp/consult\\_concept.asp?num=44](http://www.geneve.ch/plan-directeur/asp/consult_concept.asp?num=44)

<sup>17</sup> Progress with sustainable development programmes at municipal level in Switzerland, Federal Office for Spatial Development (ARE):

[https://docs.google.com/viewer?a=v&q=cache:w67gF3NDOiMJ:www.are.admin.ch/themen/nachhaltig/00264/00538/index.html%3Fflang%3Den%26download%3DNHlzLpZeg7t.lnp6l0NTU042l2Z6ln1ad1lZn4Z2qZpnO2Yuq2Z6gpJ\\_CDeIB2fGym162epYbg2c\\_JjKbNoKSn6A--+&hl=en&gl=ch&pid=bl&srcid=ADGEESj0Cr8DIBi0P8- eaVOjOv\\_vE2ObDr4W99EJIFRVuciE8IUJVFdVPJy8n6bknJmIKLz\\_WHrVk1MpwHA\\_20XDzKB8hCdDKy3U h0eIr6PivCHC22I4ld7rC62flafGBLDEsd8JZiR&sig=AHIEtbRvTZYOPpzwVH-DHvgM7y8qVuU7kQ](https://docs.google.com/viewer?a=v&q=cache:w67gF3NDOiMJ:www.are.admin.ch/themen/nachhaltig/00264/00538/index.html%3Fflang%3Den%26download%3DNHlzLpZeg7t.lnp6l0NTU042l2Z6ln1ad1lZn4Z2qZpnO2Yuq2Z6gpJ_CDeIB2fGym162epYbg2c_JjKbNoKSn6A--+&hl=en&gl=ch&pid=bl&srcid=ADGEESj0Cr8DIBi0P8- eaVOjOv_vE2ObDr4W99EJIFRVuciE8IUJVFdVPJy8n6bknJmIKLz_WHrVk1MpwHA_20XDzKB8hCdDKy3U h0eIr6PivCHC22I4ld7rC62flafGBLDEsd8JZiR&sig=AHIEtbRvTZYOPpzwVH-DHvgM7y8qVuU7kQ)

and Schweizerischer Bundesrat, *Strategie Nachhaltige Entwicklung 2002*, Bern 2002; and *Strategie Nachhaltige Entwicklung 2012-15*, Bern 2012. Also in English:

<http://www.are.admin.ch/themen/nachhaltig/00262/00528/index.html?lang=en>



which there are policies for the development of urban areas. The built environment can contribute towards the objective of Agenda 21.<sup>18</sup>

Communes have consulting competences and can realise proximity spatial management. The setting up should limit the environmental nuisances on: natural resources, social relations, health, the economy by engaging the inhabitants of the communes. If regulation is Federal, subsidiarity still prevails as it is the cantons and communes duty to set up their local plan.

Geneva Agenda 21 is concerned about lodgings and construction such as the right to a decent housing as recognised by the international community as integral part of Humans Rights. This does not mean that the commune will give lodgings to all but should allow all to be housed in convenient conditions.

It is followed the Lodgings Programme<sup>19</sup> which is considered as a guide for sustainable development for local collectivities during the next decades, and strives to conserve and restore historical and cultural heritage buildings.

The city of Geneva imposes rules to the participants of architecture competitions. They have to put energy reduction measures, users comfort, the optimal usage of natural light, integration of green spaces, measures favouring social cohesion,... The projects are examined by a jury comprising local citizens. There is also concern about integrating handicapped people by adopting the environment for their needs. Eventually health concerns, with the stress put on avoiding fungus, radon and electromagnetic fields.<sup>20</sup>

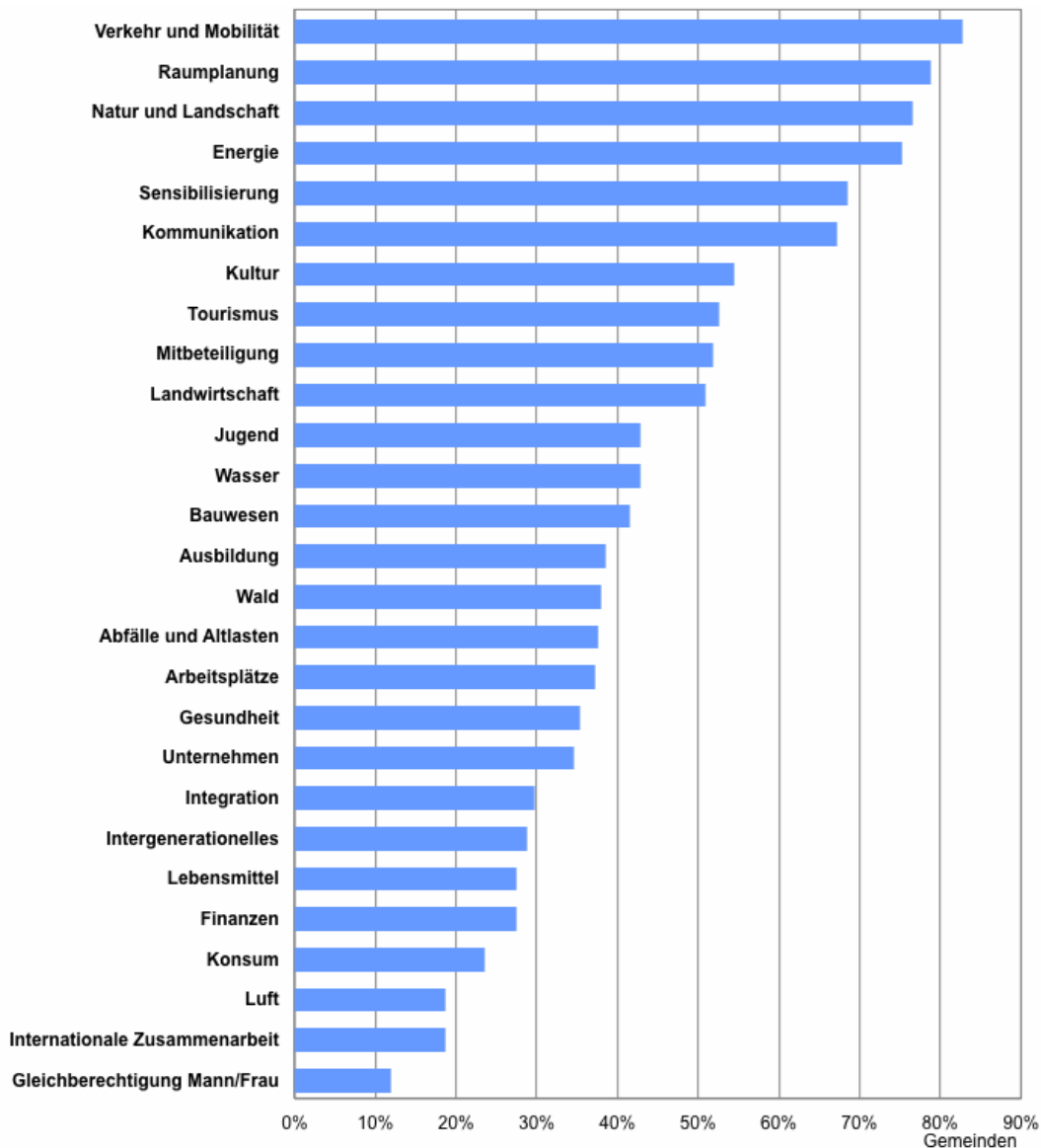
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<sup>18</sup> *Human Settlement in Switzerland...*, p. 73

<sup>19</sup> Istanbul Conference in 1996, [www.agora21.org/habitat/](http://www.agora21.org/habitat/)

<sup>20</sup> [www.geneve.ch/maisonsante](http://www.geneve.ch/maisonsante) propose des informations sur ce sujet. Guide pratique de l'Agenda 21 communal, Geneva, 2006, p. 35.

Fig.3: Mobility and spatial development are the issues most commonly tackled under Agenda21 programmes



Document taken from „Progress with sustainable development programmes...“

## Conclusion

The combination of federal regulations and exigencies, and subsidiarity on local level offers the communes to take the tasks into their hands and adopt them to their local environment and challenges. However the Confederation dictates the rules and a certain framework to the tasks to

be done because the Confederation has the exclusive right of Foreign representation to sign international agreements that have an effect on the whole of Switzerland. However the Communes or Cantons, such as Geneva, can negotiate with the bordering states and sign the cross-boarder projects that can then go up to Bern to get subsidies such as in the case of the Geneva Agglomeration, where, in deed, the Confederation now participates to build infrastructures on the French side of the border too.

The regrets that can be made are that in Agenda 21, the points covered are often only recommendations in stead of regulations. It is therefore questionable whether these suggestions will be really implemented.