



Local Government in Switzerland

Responses to Urban-Rural Challenges

edited by

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The H2020-MSCA-RISE-2018 project aims to provide solutions for local governments that address the fundamental challenges resulting from urbanisation. To address these complex issues, 18 partners from 17 countries and six continents share their expertise and knowledge in the realms of public law, political science, and public administration. LoGov identifies, evaluates, compares, and shares innovative practices that cope with the impact of changing urban-rural relations in major local government areas (WP 1-5).

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Local Responsibilities and Public Services



2.3. Land Use Planning and the Struggle over Competencies: When the Judicial Power Comes into Play, the Recent Case of Fribourg

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Relevance of the Practice

As regards land planning organization in Switzerland, the Confederation and the canton provide the principles and pass the laws and the ordinances while the communes are involved in different related fields but are particularly competent in local development planning (*plan d'aménagement local*).

Although the adoption of the local development plans is a local competence, the result of this procedure must comply with the cantonal master plan (*plan directeur cantonal*) which must be written in accordance with the Federal Act on Spatial Planning (SPA) and approved by the Confederation.

The revision of the SPA accepted by the Swiss citizens in 2013, aims at improving the control over the urbanization, at encouraging urban densification and at limiting the number of new building zones in rural areas decided at the local level. The rural municipalities are directly targeted by these new constraints and requirements and it can be said that the rural cantons that typically had a slower economic development compared to more urban cantons are the collateral victims of the revision. But they have no other choice than to limit the development of the built environment if they intend to safeguard their unspoiled landscapes, appreciated for relaxation and tourism. In the meantime, the Swiss population has repeatedly expressed their skepticism regarding the destruction of the countryside.

This practice is of importance for report section 3 on local financial arrangements since it would be interesting to study the impact of this new situation on the inter-municipality equalization formula in the canton. It would also be relevant for the report section 6 on people's participation in local decision-making as it is indisputable that local autonomy in land use planning has declined.

Description of the Practice

The Article 1 of the Federal Act on Spatial Planning (SPA) reads 'the Confederation, cantons and communes shall ensure that the land is used economically and that building areas are separate from the areas where building is not permitted. They shall coordinate their activities



that have a spatial impact and implement a system of settlements that ensures the desired development of the country. They shall take account of the natural environment and of the needs of the population and the economy'.¹⁸

The new building zones identified by the municipalities must be sized to meet the needs of the canton for the next fifteen years. Thus, municipalities can no longer decide extensions of the building area on its own competence level, as it was previously the case. Although exceptions are permitted by the new Federal Act on Spatial Planning, the conditions are very strict. All the reserves within the building zones must have been built; the availability of the building land must be guaranteed (deal with the owner is set); all necessary densification measures must have been taken and the coordination with the development of public transport must be ensured. The overarching goal being obviously to prevent the loss of agricultural land and of natural spaces.¹⁹

The new SPA gave the cantons a period of five years to adapt their own regulations, including the compliance of the cantonal master plans to the SPA. Due to the fact that the last cantonal master plan was approved in 2002, the Canton of Fribourg decided unilaterally to write a fresh new cantonal master plan. In December 2017, a few months before the state council of the canton Fribourg approved its new cantonal master plan, it was decided to assess the local development plans submitted by the municipalities during the last 5 years according to the former master plan (and thus the old SPA that was less binding). Thus, many large building zones proposed by the municipalities were approved by the canton and many construction works started.

This is when the cantonal court came into play. In September 2019, the cantonal court ruled against this operating mode, overturned the decision made by the cantonal office for land use planning and declared 57 local development plans as illegal. The State council of the canton Fribourg appealed to the federal court that confirmed the cantonal court's decision in October 2020. In the meantime, the construction works in the disputed building zones are frozen and the but thanks to a pragmatic and solution-oriented attitude of the majority of the municipalities concerned, 39 municipalities already revised their local development in order to comply with the new SPA. Some municipalities are currently studying the legal actions available against the cantonal Government of Fribourg, the only Swiss canton to find itself in such a problematic position. Other mayors publicly ruled out any resort to justice, acknowledging that the canton had naïvely hoped to simplify the work of the municipalities.

¹⁸ For an English translation of the Federal Act on Spatial Planning, see <<https://www.admin.ch/opc/en/classified-compilation/19790171/index.html>>.

¹⁹ 'Plan directeur cantonal' (*Etat de Fribourg*, 9 June 2020) <<https://www.fr.ch/daec/seca/sommaire/plan-directeur-cantonal>>.



Assessment of the Practice

The practice is not only of interest for the lawyers as it deals specifically with the application of public law over time but it also raises many questions regarding the distribution of competencies between the three layers of the Swiss federal organization and brings into light the declining autonomy of the rural municipalities in this specific policy field. The role played by the judicial power in this context is not yet clear as the appeal is pending before the federal court but the case is challenging the trust placed in the administrative authorities by its citizens.

References to Scientific and Non-Scientific Publications

Legal Documents:

Federal Act on Spatial Planning of 22 June 1979, SR 700

<<https://www.admin.ch/opc/en/classified-compilation/19790171/index.html>>

Federal Act on Rural Property Law of 4 October 1991, SR 211.412.11

<<https://www.admin.ch/opc/fr/classified-compilation/19910253/index.html>>

Scientific and Non-Scientific Publications:

Website of the Canton of Fribourg, <<https://www.fr.ch/daec/seca/sommaire/plan-directeur-cantonal>>



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