Legal Protection Issues for Sustainable Waterfront Development: The Athenian Riviera, Greece

Foteini Bageri(✉)

Judge (Associate Councilor) of the Hellenic Council of State, Athens, Greece
fotini.bageri@gmail.com

Abstract. The Greek coastal territory, having a coastline length of 15,000 km, constitutes a major natural resource and, at the same time, a sensitive ecosystem that needs increased protection, in order to preserve its natural capital and its landscape, but also to ensure the citizens' free access to the sea. Its management, as a transitional zone between land and sea, is directly related to maritime spatial planning and the principle of sustainability. The research attempts to highlight critical issues of the coastal area's legal protection, during its exploitation and planning, choosing as a case study the part of Athens sea front, from the Faliron Bay to the area of the former "Hellinikon Airport" which forms the main "openness" of Athens to the sea. The selection of the research' s subject and study area was due to the great urban regenerations that were and are being elaborated in it, as a result of the state' s and individuals' interest for its investment, exploitation and utilization. The research methodologically approaches the issues from the point of view of the coastal area's legal protection provided by the institutional framework and its implementation by the Hellenic Council of State.

Keywords: coastal cities · sustainable waterfront development · maritime spatial planning · integrated coastal zone management · sustainability and climate adaptation

1 Introduction

The Greek coastal area, with a coastline of 15,000 km, is a dominant feature of the Greek territory, an extremely important national resource and a significant comparative national advantage at the level of the European Union [1, 2]. At the same time, however, it is a sensitive ecosystem that requires increased protection, due to the scope and intensity of the economic and manmade activities that are developed in it, which burden its carrying capacity. The management of coastal zones, which constitute the transition zone between land and sea, is directly linked to maritime spatial planning [3], which aims to ensure that all activities organised in maritime areas are rationally managed so that they are within the framework of the principle of sustainability [4].

The research attempts, in essence, to highlight the legal protection issues of the coastal area and, in particular, the part of the coastal front of Attica, from the Faliron

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Bay to the area of the former "Hellinikon airport", which constitutes the main opening of the city of Athens to the sea. The reason for the selection of this particular area was the fact that, in recent decades, the development and investment interest of the state and private investors has focused on the spatial configuration, exploitation and use of this part of the coastal area of Attica, resulting in the intensification of uses and pressures and the formation of an environmentally and spatially burdened coastal area. Particularly decisive for that selection was, on the one hand, the choice of the state to proceed, about a decade ago, with the redevelopment of the Faliron Bay and on the other hand, the decision of the state to proceed, during approximately the same period of time, with the investment and development exploitation of the single property of the area of the former "Hellinikon airport".

The basic axis of reference which governs the examination of all the individual vision perspective of the study is the basic jurisprudential principle that has been formulated by the country's Supreme Administrative Court (namely the Hellenic Council of State - 'Symvoulio tis Epikrateias'- hereinafter CoS or the Court) that the coasts, which are vulnerable ecosystems within the meaning of Article 24 of the Greek Constitution (hereinafter Constitution), must be subject to a special regime of soft management, in harmony with the constitutionally enshrined principle of sustainable development. This regime is usually the subject of a specific law but in any event, in the absence of a specific legislative protection regime, the coast is directly subject to the protection imposed by Art. 24 of the Constitution and Article 130P of the Maastricht Treaty.

The above-mentioned constitutional protection of the coast requires, first and foremost, the drawing up of the relevant spatial plans [5], which has unfortunately not yet taken place, despite the fact that attempts have been made to regulate the spatial planning of the coastal zone with the draft Special Spatial Planning and Sustainable Development Frameworks for the Coastal Area of 2003 (Ministry of Environment and Spatial Planning) and 2009 (Ministry of Environment and Spatial Planning), which were never approved [3]. The protection of the coastal area and the planning of activities in the marine area is one of the most important issues that are in the focus of interest both in Greece, the European Union and third countries and, at the same time, a challenge for the Greek public administration and the sciences related to the areas' planning [6].

2 Methodology and Sources

Place of Reference: The paper approaches the issue methodologically from the point of view of the protection of the coastal area provided by the institutional texts and their interpretation and implementation by the Court and focuses its interest, spatially and temporally, on the two most important - due to their spatial consequences - urban interventions, namely the redevelopment of the Faliron Bay and the development of the area of the former "Hellinikon airport" (Fig. 1).

Research Process-Sources: Methodologically, the research was based, first of all, on the search and study of secondary sources, namely, the protection of the coastal area provided by the institutional texts (national, EU and international legislation) and their implementation by the Court (case law), with emphasis on the study area, as well as the relevant scientific articles and literature on the subject. In addition, for a better

understanding of the specific area's spatial particularities, as well as its environmental dimensions and for the adequate support of secondary sources, a field survey was carried out in the area, which demonstrated the legal protection issues and problems of the coastal area in question. In particular, the fieldwork helped to identify and shed light on many and varied economic activities and uses currently taking place in the area and to shed light on the emerging conflicts between them, as well as the interrelationship and dynamics that are developing between them and the adjacent land area.

3 The Coastal Zone from the Faliron Bay to the Former "Hellinikon Airport": Characteristics and Peculiarities

The development of the urban complex of Athens has evolved rapidly and in such a way that, as has been vividly observed, 'the city seems to be turning its back on the sea' [7]. The shores of the Saronic Gulf have also been at the centre of development and investment pressures over the last twenty years and a number of fragmentary zoning schemes for public and private uses have fragmented its coastline. Today, the coastal front of Attica from the Faliron Bay to the coastal zone of the former "Hellinikon airport", which is mostly occupied by the sports and Olympic facilities of Ag. Kosmas, brings together a complex network of supra-local uses of tourism, sports, nautical facilities, recreational infrastructure, transport, marinas, catering (restaurants, bars, cafes), shops, having as the dominant use that of the marina (tourist port). It is characteristic that in the specific area five (5) marinas (Athens Marina, Kallithea Delta Marina, Flisvos Marina, Alimos Marina and Ag. Kosmas Marina) have been located and are in service.

The consequence of the fragmentation of uses, the concentration and densification of all these activities and land uses on this coastal area is, first of all, that the accessible part of the coastal area, especially the seashore and the beach, is reduced, making it difficult and, in some cases, impossible for citizens to access the sea. Given the fact that redevelopment projects are under way in the wider area of the Faliron Bay, which makes access to the coast difficult and dangerous, it is characteristic that very few open parts of the seashore and beach remain for the common use and enjoyment of citizens. The coastal section from the Peace and Friendship Stadium to Agia Marina of Kropia is protected, in principle, by the Presidential Decree of 1.3/5.3.2004 on the determination of protection zones, land use and building conditions from the Faliron Bay to Agia Marina Kropia, a particularly useful institutional tool for the protection of the coast, the control of supra-local uses and inter-municipal cooperation in coastal management.

The coastal front of the area under consideration (Fig. 1) belongs administratively to the Regional Unit of the South Sector of Athens, is located in a position of central importance for the city and constitutes the natural outlet to the sea for the city of Athens. It is approximately 12 km long and consists of the coastal areas of the municipalities of Moschato-Tavros, Kallithea, Paleo Faliron, Alimos and Elliniko – Argyroupolis. Particularly, the coastal zone of the Faliron Bay, 2 km long, ranging in width from 25 to 900 m, is historically the natural outlet of the Athens Basin area to the Saronic Sea and covers an area of 800 acres along the coastline, including the coastal zone around the urban areas of Moschato, Kallithea and Paleo Faliron, from the mouth of the Kifissos River to the Municipal Sports Centre of the municipality of Paleo Faliron. Within the

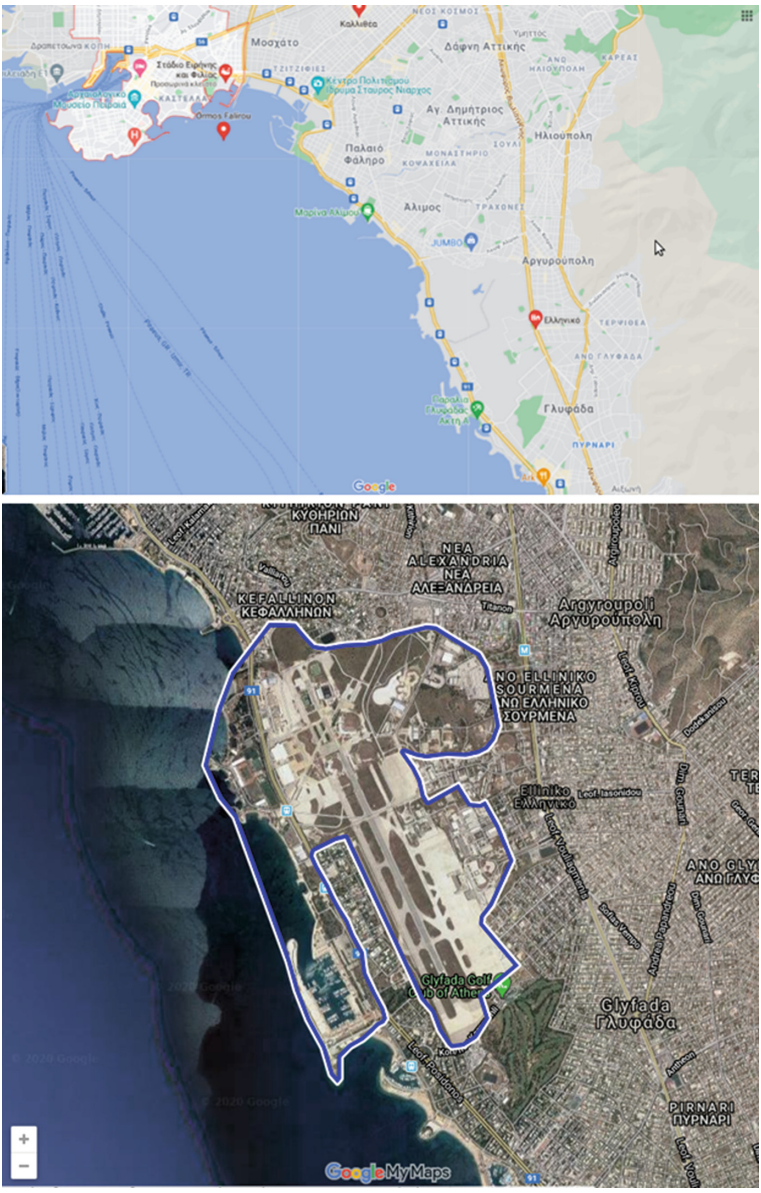

Fig. 1. The place of reference: From Faliron Bay to the former Hellinikon airport [11–14]

Faliron Bay to the left of the Peace and Friendship Stadium and the adjacent Marina, one of the most important spatial interventions that have ever taken place in the coastal area of Attica is underway but these projects have come to a standstill.

On the other hand, the development and utilisation of the former "Hellinikon airport" has followed its own parallel fifty-year course of successes and failures, from 1978, the

year in which it was decided by law that this land would be commercially exploited to finance the construction of a new airport in Spata. During this period many studies have been carried out but, as Professor L. Wassenhoven has aptly underlined, the case of the former "Hellinikon airport" is a typical example of the chronic inability of the state (central, regional) and local government to respond to spatial planning on such a scale [8]. The area of the Metropolitan Pole of Hellinikon-Ag. Kosmas of the Region of Attica is administratively integrated within the boundaries of the Municipalities of the former "Hellinikon airport"- Argyroupolis, Alimos and Glyfada. Along its western boundary (towards the beach side of Ag. Kosmas) it is bounded by the coastal Poseidonos Avenue and the residential area of the lower former "Hellinikon airport". On the eastern boundary is Vouliagmeni Avenue. It has an area of approximately 6,008 acres. It is about 10 km from the centre of Athens and the Acropolis and it consists of three individual properties: the former "Hellinikon airport", with a surface area of 5.249.873 sq.m., the former Olympic Sailing Centre of Agios Kosmas and the National Youth Sports Centre. The last two constitute the coastal front of the Metropolitan Pole of Hellinikon-Ag. Kosmas, and, after deducting the areas occupied by the seashore and the beach (197.600 sq.m.), have a total surface area of 758.203 sq.m.

The area of the former "Hellinikon airport", after the Olympic Games and the transfer of the airport to Spata, took on the form of an "urban void", the spatial status of which was the subject of only fragmentary regulations in the post-Olympic period. However, although this property has been of great interest to the legislator since 2011, it has not since then acquired a spatial identity in its entirety. With the approval of the Integrated Development Plan of the Metropolitan Pole of Hellinikon-Agios Kosmas of the Region of Attica by the Presidential Decree of 28.2.2018 (Government Gazette A.A.P. 35), an attempt is made to implement the overriding, strategically important planning contained in the new Athens Regulatory Plan (Law 4277/2014), which elevates the Metropolitan Pole of Hellinikon-Agios Kosmas not only to a metropolitan, but also to a national and international pole of national and international scope. On the other hand, due to the intensity and extent of the environmental impacts [9, 10], but also the spatial and social footprint that the planned project would have, serious reservations were raised about its construction and implementation by various collective representative bodies and citizens, but also in the context of public discourse [11–14], in view of the fact that the exploitation of the area in question was promoted in the context of the country's memorandum obligations and the need for rapid economic growth.

4 Legal Protection Issues: Priorities for Coastal Sustainability and Resilience

4.1 Exceeding Carrying Capacity

Coasts as fragile ecosystems are directly subject to the protection imposed by Article 24 of the Constitution (CoS 3944/2015, 2713/2013, 4542/2009, 2506/2002, 3346/1999) and must be subject to a special regime of soft management and development, in line with the constitutionally enshrined principle of sustainable development. The over-concentration of marina, fishing, tourism and catering uses in the coastal area of the region, in view of

the fragile nature of coastal ecosystems, raises a major issue of legal protection of the carrying capacity of the coastal area, which is exceeded by the exploitation of those uses, in breach both of Article 24 of the Constitution and of the Protocol on Integrated Coastal Zone Management in the Mediterranean, which is an integral part of the International Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and at the same time part of European Union law.

4.2 Failure to Adopt the Special Framework for Spatial Planning and the Coastal Zone's Sustainable Development

The issues of the coastal area's legal protection highlight the need for a comprehensive planning of activities developed in the marine and terrestrial space, which requires a comprehensive understanding of local conditions and particularities. The sustainable coexistence of land uses and activities, as well as their appropriate and rational location in the marine and coastal area, requires an integrated planning and management approach through the field of maritime spatial planning and, in particular, Integrated Coastal Zone Management (ICZM). While the spatial planning system in Greece has a sufficient number of tools for the strategic management of spatial issues arising at national and regional level, the coastal area has not been addressed in total. The elaboration of the Spatial Planning and Sustainable Development for the Coastal Area Special Framework is intended to cover the coastal protection deficit, in accordance with Law 4546/2018, with which the important Directive 2014/89/EU was incorporated into the national legal order.

4.3 Compatibility of Existing Uses and Building Conditions - Restrictions by the Presidential Decree of 1/5.3.2004

Reservations are expressed as to whether the presidential decree of 1/5.3.2004 has been observed by the Planning that has been prepared and implemented, and is still being observed in practice, in the development of all man-made activities and uses within the critical coastal area. It would therefore be an interesting subject for another study, which would aim to investigate whether the existing or ongoing planning is in line with the provisions of the 2004 decree for the coastal zone (from Faliron Bay to Ag. Marina Kropia). It is therefore very important that state control and supervision is carried out in order to ensure that existing and new uses and activities comply with this institutional framework.

4.4 Violation of Beach and Shore's Public Character and Legislation

The field survey revealed, among other things, a generalised process of granting to municipalities or private individuals the exclusive use of the seashore and the beach of the area concerned, resulting in the violation of the public nature of the seashore and the beach. The coast is not only a source of income for the State, local authorities or private individuals, but, above all, a place where the State and the local authorities should carry out environmental restoration and improvement projects from the contributory

fees collected. On the contrary, in parts of the area concerned, the field survey found out that private enterprises are operating on the seashore and the beach under exclusive concession contracts that negate their public nature, in violation of the provisions of Law 2971/2001, the latter of which only allows simple and not exclusive use and require the demolition of any arbitrary structure built within them. It is therefore appropriate to establish a state mechanism for monitoring the terms and conditions of concession agreements and the demolition of unauthorised constructions on the seashore and the beach.

4.5 Lack of Accessibility

The spatial planning which has taken place over the past decades in the coastal area concerned has resulted in the virtual disconnection of the urban complex from the coastal zone. One of the factors contributing to this was the fact that Poseidonos Avenue divided the city in two and in some places completely cut off the view of the sea, erecting a wall between it and the urban complex. This was due to the fact that spatial planning was not sufficiently combined with sectoral planning (e.g. transport), having as a direct consequence that the roads' layout and transport traffic contributed even more to the spatial exclusion of the sea from the urban complex. In the light of the provisions of Law 4546/2018 and the Protocol on the Integrated Coastal Zone Management and in conjunction with the state's obligation, under Art. 2 of Law 2971/2001 for the protection of the coastal zone ecosystem, the provisions of Art. 13 and 15 of Law 2971/2001 must be interpreted as having the concept that only the concession to primary local authorities of non exclusive rights over the seashore and the beach for the exercise of - mild and compatible with the designation of those elements as common property - activities is permitted. Consequently, activities such as bar-restaurants are activities, which are not compatible with the character and purpose of the seashore as a natural asset in common use, are not permitted by law.

4.6 Violation of Coastal Ecosystems, Landscape Aesthetics and Coastal Zones' Geomorphology Integrity, in View of Climate Change and the European Green Agreement

The Climate change and environmental degradation threaten coastal zones, as well as the very existence of Europe and the world. Extensive intervention in the coastal area concerned has resulted in the degradation of the natural environment, adversely affecting and altering its geomorphology and aesthetics. Within the level of legal protection provided by the European legislation, the Community Directive 2001/42 "on the assessment of the environmental effects of certain plans and programmes", which was incorporated into the Greek legal order by the Ministerial Decision 107017/2006 (Government Gazette B1225/5.9.2006), establishes the obligation to assess the environmental impact of plans and programmes of national, regional, prefectural or local character. Projects and activities developed in coastal zones definitely fall within the scope of the aforementioned Directive.

5 The Judicial Dimension in Coastal Areas' Legal Protection

A. **General issues**

Although the wording and terminology of Article 24 par. 2 of the Constitution refer to land spatial planning, since the activities described take place by definition on land (town planning, development, shaping, development and expansion of towns and residential areas, ensuring the best possible living conditions), however, the case-law of the Court has given the concept of spatial restructuring of the country an integral dimension, so as to include maritime spatial planning [15].

5.1 Coasts

According to the established case law of the Court, the two obligations imposed, by Article 24 of the Constitution, on the State, namely the obligation to protect the natural and cultural environment and the spatial planning of the country "are obviously interdependent, so that there can be no protection of the environment without spatial planning and vice versa" (CoS 1243/2016, 670/2020, 4542/2009 7 m., 2506/2002 7 m. etc.). Within this framework, the ecosystems of the country's coasts are treated as part of the natural environment, indeed vulnerable (CoS 978/2005) and as such need increased protection (CoS 1500/2000). In particular, the coasts must, in the sense of the above constitutional requirement, be under a special regime of soft management and development, which alone is sustainable, i.e. in line with the constitutionally enshrined principle of sustainable development (CoS 3944/2015, 2713/2013, 4542/2009, 2506/2002, 3346/1999). Moreover, the protection of the coast is also ensured at supranational level by the Protocol of the Integrated Coastal Zone Management of the Mediterranean, which is an integral part of the international Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, i.e. the Barcelona Convention, ratified by Law 855/1978 and forms part of EU law (CoS 3977/2010, 2752/2013, see also judgment of the ECJ of 7.10.2004, Commission v France C-239/03 on the protection of Lake Berre). The above-mentioned constitutional protection of the coastline presupposes, first and foremost, the preparation of the relevant spatial plans, which must include for example all types of port works, which constitute substantial technical interventions and alterations to coastal ecosystems (CoS 1343/2016, 2430/2010, 3940/2008, 2266/2007, 1340/2007, 978/2005, 2506/2002, 1507/2000, 1434/1998, 4634/1997, etc.).

5.2 Seashore and Beach _ Arbitrary Construction

Moreover, the Court has consistently ruled (CoS 76/2020, 4442, 2245, 1229/2014 etc.) Law 2971/2001 establishes an administrative procedure for the determination of the boundary line of the seashore as a natural phenomenon, i.e. the maximum normal wave height in a given land zone. Law 2971/2001 regulates and protects, in principle, only certain zones of the coastal area, namely the coastal zone, the beach, the coastal zone up to 100 m from the coastline and the ports. According to the case law of the Court, arbitrary buildings erected wholly or partly within the sea or the sea are subject to compulsory demolition. In addition, the Court ruled that Article 970 of the Civil Code lays down a basic rule of public law according to which the assignment by the administrative

authority to natural or legal persons of special rights to common property is lawful only if and in so far as, even after the assignment of those rights, the common use of the property continues to be served or at least is not negated (CoS in plenary session 394/1963, 1377/1971, 2799/1972, 61/1974, 1467/1990, 891 - 895/2008, 2685/2010 7 m.). This rule is repeated, in the case of the seashore, in the relevant special administrative legislation (Law 2971/2001, Articles 2, 13, 14 and 15).

5.3 Direct Concession of the Right of Beach and Seashore's Simple Use to a Local Government Organization

With regard to the status of direct concessions to primary local authorities issue in exchange for the right of simple use of the beach and the bank and riparian zone of large lakes and navigable rivers, the Court has repeatedly accepted (CoS 1630/2016, 646/2015, 3944/2015 7 m. etc.) that the provisions of Articles 13 and 15 of Law 2971/2001, interpreted in the light of Article 24 of the Constitution, but also of the Protocol on Integrated Coastal Zone Management in the Mediterranean, must be interpreted as having the meaning that the concession of the right of beach and seashore's simple use to primary local authorities for the exercise of mild activities must be carried out individually and on a case-by-case basis, following an individual assessment by the administration, accompanied by the necessary diagrams in order to ensure its intended use as a public asset.

5.4 Sustainable Development

Within this framework, as has been ruled by several Court decisions, Art. 24 par. 1 and 6, elevates the natural and cultural environment to an independently protected asset. The competent organs of the State are required to take positive action for the effective safeguarding of this asset and, in particular, to take the necessary legislative and administrative, preventive and repressive, measures, intervening to the extent necessary, in economic or other individual or collective activity. In taking those measures, the legislative and executive bodies must take into account other factors relating to the general national and public interest, but the pursuit of those objectives and the balancing of the respective legal interests to be protected must go hand in hand with the State's obligation to protect the environment in such a way as to ensure sustainable development for the benefit of future generations. Furthermore, from the provisions of Art. 24 par. 1 and 2, 79 par. 8 and 106 par. 1 of the Constitution, it follows that spatial planning, which is the spatial expression of economic and social development programmes, is the responsibility of the State, which is obliged, in accordance with the principles and findings of the science of spatial planning, to take the measures necessary for rational spatial planning in order to ensure the protection of the environment, the best possible living conditions for the population and economic development in accordance with the principle of sustainability. Within this framework, an essential factor for sustainable development and the protection of sensitive ecosystems are the spatial plans, which set the long-term objectives of economic and social development and regulate, inter alia, the framework for the development of residential areas (CoS in plenary session 3632/2015, in plenary session

3920/2010, 4189, 4966/2014, 1421, 1422, 4784, 4785/2013, 3396–7/2010, 3037/2008, 705/2006, 1569/2005 etc.).

In particular, in the exercise of the annulment of an administrative act, the judge examines, inter alia, whether the environmental impact assessment, which is the basic instrument for applying the prevention and precautionary principle, meets the requirements of the law and whether its content is sufficient to enable the competent administrative bodies to assess and evaluate the risks and consequences of the project or activity and to assess whether the realisation of the project or activity is likely to lead to a significant reduction in the environmental impact of the project or activity.

B. **Particular Issues**

Related to the area from the Faliron Bay to the former "Hellinikon airport"

5.5 Opinion 55/2002 _ Approval of the Olympic Facilities Area and the Redevelopment of the Faliron Bay E.S.O.A.P.

The Court accepted that since, under Law 2730/1999, the development of the pole of the Faliron Bay is post-Olympic and is simply linked to the Olympic works, its creation is intended, inter alia, to improve the general development of its area and, therefore, to solve its problems and indeed its fundamental problems. The designation of the Faliron Bay and its wider area as a supra-local pole of activities (tourism, recreation, social services and culture), linked to the Olympic works, but without the large-scale development previously envisaged, means that the legislator, respecting the protection of the coastline imposed by Article 24 of the Constitution, does not tolerate the use of land siltation as a method of increasing the area of the pole to serve all the activities developing in the pole, except to the extent that it is necessary for the creation of the Olympic facilities and the solution of the basic problems of the wider area. On this basis, the Court held that the measures provided for by the draft presidential decree.

5.6 CoS 2173/2002 _ TRAM Project

The Court held that the Athens Regulatory Plan Law (R.S.A.) was adopted in compliance with Art. 24 paragraph 1 and 2 of the Constitution. The provisions of Law 1515/1985 provide for guidelines, programmes and measures for the upgrading of the natural and man-made environment, which bind the Administration in the exercise of its regulatory power or the adoption of individual acts. Within the meaning of those provisions and in particular Art. 15A paragrah 2, the areas of the supra-local poles, including the Faliron Bay, must be accessible to the inhabitants of Attica, and indeed with the desired creation of a single network of connections to serve their recreational, sporting and cultural needs. The legislator, in order to draw up the Athens regulatory plan, specifically weighed the need to protect the environment of the wider Athens area and, in the context of this protection, provided, among other things, for a fixed-track system of public transport as a high level of service. Therefore, the provision in itself of the project at issue (Law 1515/1985) is not contrary to Art. 24 paragraphs 1 and 2 of the Constitution.

5.7 Opinion 371/2003 _ Definition of Protection Zones, Land Uses and Building Conditions and Restrictions from the Faliron Bay to Agia Marina Kropias

The Court observed that the execution of a technical project on the coast, such as the creation of an artificial sandy beach, is allowed only for reasons of public interest and provided that it is compatible with the ecosystem concerned. Consequently, a provision of the plan authorising the creation of new bathing beaches, and indeed indiscriminately in any part of the regulated coastal zone, was not lawful because it did not appear that there were reasons in the public interest requiring such an intervention, which was not compatible with the natural function and aesthetics of coastal ecosystems.

5.8 Opinion 132/2013 _ Approval of Faliron Bay's Integrated Regeneration Programme

The Court accepted that Art. 1 paragraph 2(c) of Law 2730/1999, which added to the category of supra-local recreational, sports and cultural poles originally, provided for by Law 1515/1985, the category of tourism-recreation and social services use, does not contradict Art. 24 of the Constitution. Furthermore, the Court ruled that the activities authorised by Art. 11 of Law 3843/2010 in the redevelopment area of Faliron Bay and consequently the other provisions of that article on the conditions for the structure of the area redevelopment zones (structure and coverage factors), as amended by par. 4 of Art. 51 of Law 4042/2012 do not constitute a deterioration of the residential environment and the living conditions of the residents and do not contravene Art. 24 of the Constitution in force, since they involve a mild intervention in the artificially shaped coast of the Faliron Bay, which improves the existing situation and highlights the character of the area as a supra-regional pole of sport, tourism, recreation, social services and culture, in view of the judicial marginal control.

5.9 Opinion 93/2018 _ Approval of Alimos Marina Master Plan

The Court held that since the plan, in accordance with the Strategic Environmental Impact Assessment and the other elements accompanying it, is consistent with the objectives and guidelines of the new Athens Regulatory Plan, Articles 2 and 3 of the draft presidential decree lawfully modify the existing regulations for the land area of the marina. The Court held that even if ports and tourist ports contribute to the local development of an island or non-island area, the ownership, as well as the choice of how to use, administer, manage and exploit them, belongs in principle to the state, and the legislator has the discretion to choose the most appropriate way to use ports and tourist ports without being obliged to grant their management exclusively to the relevant local authority or to maintain any management granted to a local authority. Therefore, the legislator is not prevented from transferring to the Hellenic Property Fund the right to grant to third parties the rights of use, administration, management and operation of ports and tourist ports, even if the management has been granted to Local Government Organisations (CoS 1155/2016 in plenary session).

Related to the area of the former "Hellinikon airport"

5.10 Opinion in Plenary Session 29/2018 _ SOA "Former Hellinikon Airport"

The Council of State in plenary session (PE 29/2018) gave an opinion that: (a) mild interventions on the coast, the upgrading of the beach and the possibility of constructing an aquarium are legally provided for, in conjunction with the wider redevelopment of the Faliron bay that has been approved by the Court (Opinion 132/2013), (b) the Integrated Development Plan partially modifies the provisions of the Plan of 1.3.2004 Presidential Decree because it provides for the possibility of pure residential and tourism-recreational uses on the coastal front of the Metropolitan Pole Ellinikon - Ag.Kosmas, (c) Only limited coverage (15%) is allowed on the coastal front, which is consistent with the character and physiognomy of the entire property and in order to facilitate the exits of the Park to the sea, (d) The provisions of the draft presidential decree, which establishes residential, urban centre, tourism-recreation, etc. land uses in the area, firstly, or by modifying those already provided for, are in accordance with Article 24 of the Constitution.

5.11 CoS in Plenary Session 1305/2019 _ Legality of the Former "Hellinikon Airport" Integrated Development Plan

The Court ruled that the constitutional (Art. 24(1) and (2)) purpose of protecting the environment and ensuring the best possible living conditions for the population is, in principle, achievable, by linking environmental protection with economic development, also inspired by the Constitution, which, according to the letter of the relevant constitutional provision (Art. 106 (1) and (2)), is, in the first place, achievable through the link between environmental protection and economic development. This is because respect for the environment as a collective good and the preservation of its quality not only do not exclude but also presuppose and are facilitated by the economic development. Conversely, however, economic development, which is achieved, inter alia, through the exploitation of natural resources, may not be pursued without the competent legislative and administrative bodies taking care to protect and preserve the environment, so that economic development may become sustainable, defined by the principle of sustainability, as required by the Constitution. Furthermore, the spatial status of the area was fragmentary and discontinuous, so that any subsequent complete planning of the area and the imposition of new uses and building conditions cannot be understood as a degradation or deterioration of the environment and the living conditions of neighboring areas.

On the contrary, a dissenting opinion of 10 out of 30 judges supported that as far as coastal areas are concerned, the contested presidential decree allows for its urbanisation, with a 40% coverage rate and a predominant use of housing, as well as the construction of a high-rise building, without there being any spatial and/or urban planning necessity for that residential development, but with a view to the most advantageous use of the wider property, the project is based on rules which are not compatible with Art. 24 of the Constitution, in conjunction with Art. 106 thereof, which brings about an unacceptable deterioration of the natural and residential environment of Attica in relation to the previous special planning of the area, and is therefore unlawful.

5.12 CoS in Plenary Session 1761/2019 _ Legality of the Integrated Development Plan of the Former "Hellinikon Airport" and Environmental Impact Study

The Court, reiterating its 1305/2019 decision, held that a) under Directive 2001/42/EC "on the assessment of the effects of certain plans and programmes on the environment", there was no obligation to prepare a Strategic Environmental Impact Assessment before the adoption of the relevant Law 4062/2012, issued after the Medium-Term Fiscal Management Programme, or the Law 4422/2016, b) the consultation procedure followed was not contrary to either Directive 2001/42/EC or the Aarhus Convention, c) the examination of the compatibility of the integrated development plan with the "Attica landscape" does not fall within the competence of the archaeological service and that the provision of tall buildings does not violate the cultural environment and, therefore, does not constitute a violation of Art. 24 par. 1 and 6 of the Constitution and d) the integrated development plan does not constitute an impermissible deterioration of the environment and a deterioration of the residential conditions in relation to the previous status of the area, which constituted an "urban void" and was characterised by discontinuity.

5.13 CoS in Plenary Session 2776/2020 _ Ownership of the Former "Hellinikon Airport's" Public Spaces

The Court found that State owns 70% of the land of the Metropolitan Pole and the investor will receive 30% of the land on an undivided basis under the purchase and sale agreement concluded. However, before this happens, the property will be divided into areas of exclusive ownership of the State (70% of the land) and, prospectively, of the investor (30%), thus creating two portions of exclusive ownership, the first of the State and the second of the investor. However, there is no indication that the common areas will be included in the investor's share. On the contrary, it is clear from the content of the purchase contract and the legislation that the State and not the investor will control, through regulations and the adoption of standards, the public spaces of the Metropolitan Pole.

5.14 CoS 895/2021 _ Legality of the Spatial Organisation of Development Zones PM-A1 and PM-A2 St. Kosmas Marina Neighbourhood and St. Kosmas Aquarium Neighbourhood

The Court's decision 895/2021 ruled that the approval of the spatial organization of the Development Zones PM-A1 Agios Kosmas Marina Neighborhood and PM-A2 Agios Kosmas Aquarium Neighborhood of the Metropolitan Pole of Hellenic area - Agios Kosmas and the environmental conditions thereof was legal.

6 Conclusions and Discussion

During the last twenty years, the area from the Faliron Bay to the former "Hellinikon airport" has been at the centre of the economic commitments of the Greek state, but also of the state's objective change for the development of Attica's coastal front. The plans

for the Olympic projects further aggravated Athens relationship with the sea, as they did not seem to facilitate the city's connection to it, taking into account the fact that the Olympic facilities both in Faliron Bay and former "Hellinikon airport" remained largely unused, devalued and closed.

6.1 Regarding Legislation: The Spatial Legislation as a Result of the Changing Needs of the Greek State

The study of the evolution of spatial planning legislation for the area concerned allows, in my opinion, to draw some conclusions in relation to the spatial implications of the legislative production as regards the coastal area. First of all, the relevant legislative production did not take place by chance or occasionally, but it was the consequence of the alterations of the Greek State's economic, social, developmental and spatial needs and priorities over time. Furthermore, the increase in legislative production for the area concerned during the last two decades, initially for the redevelopment of the Faliron Bay and later for the Hellinikon, is part of the change of the legislator's targeting under the pressure of the economic crisis and the need of the Greek state to repay its public debt and to create appropriate conditions for attracting investment and development, creating jobs and exploiting the privileged competitive advantage of Attica's coastal area.

6.2 Regarding the Field Research _ The Spatial Footprint of the Legislation

While the area of the Faliron Bay seemed to acquire a new form and potential for the overall upgrading of the metropolitan complex, through the plans of the Olympic Games, nevertheless, a significant part of the Integrated Redevelopment Plan carried out in the context of the Olympic preparations remained unused and was gradually discredited, while the remaining part of the infrastructure and redevelopment projects was never implemented, due to the time constraints and financial limitations at the time. As a result, the resolution of major environmental and operational problems of the capital associated with these projects suspended the city's dynamism and devalued the completed Olympic Games projects. On the other side of the coastal front, the area of the former "Hellinikon airport", after the Olympic Games and the transfer of the airport to Spata, assumed the form of an "urban void" and it had not acquired a spatial identity in its entirety. Appeals for annulment brought by citizens and collective bodies representing them in the Hellenic Court of State were rejected by the aforementioned decisions of the Court.

Despite the broad legislative production of spatial planning regulations for the area concerned, the intense state's interest for the regulation of the area, as well as the special institutional tools that had already been established by the legislator since 2002, from which one would expect the implementation of the urban planning and the improvement of the residents' living conditions, as well as the coastal area in general, however, the urban planning did not have the expected results. As the field research has shown, large parts of the study area from the Faliron Bay to the former "Hellinikon airport" showed a picture of abandonment, degradation or poor maintenance. It remains to be seen in practice what the new regenerations spatial impact on both sides of the area will be, when they will have been completed.

Furthermore, the control of land use in the coastal area, which was attempted especially with the decree of 1/5.3.2004, was not accompanied by the corresponding control of residential development in the land zone in the immediate vicinity of the coastal front. Another major problem identified during the field survey is the coverage of large parts of the seashore and beach by the extensive concession of the right to use the beach and the seashore, which results in the annulment of their public nature, in apparent violation of the relevant legislation, as well as their constitutional protection status. It is therefore necessary to revise that regime, to monitor its lawful operation and, in certain cases, to reduce the number of concessions which have led to the de facto occupation of the whole part of the seashore and the beach.

In my opinion, the unbalanced development and institutionalization of the various uses and activities in the wider coastal zone under consideration undermines the objectives of the spatial planning and the project of Attica's coastal front spatial planning itself. In other words, it seems that what the legislator of the presidential decree of 1/5.3.2004 attempted to do in the coastal front of the area is in practice annulled by the legislator's fragmentary attempt to regulate individual parts of the coastal area. The reference to the critical legislative framework and the case law examples demonstrate, in my opinion, that the management of the coastal zone in Greece is characterised by a diffusion of responsibilities and a lack of coordination at the level of planning and control of natural and man-made activities. The lack of coordination at the planning level is partly due to the unavoidable fact that urban planning is different in time and therefore fragmented and when it is carried out, it responds to the alterations of state's local authorities' or private parties' social, economic and development needs.

Inevitably, the study puts at the heart of the search of the causes, which have contributed to the current poor state of the critical coastal area, the issue of its sustainability and sustainable development, which is the great challenge of spatial planning and urban design. It can be seen that while the debate in Europe on integrated coastal zone management has been underway since the early 2000s (signing of the Madrid Protocol of 21.1.2008 on integrated coastal zone management in the Mediterranean), Greece is still too late to incorporate the parameter of maritime spatial planning and integrated coastal zone management into its legislation and policies. Only in 2018, Law 4546/2018 incorporated into the Greek legislation the Directive 2014/89/EU for the marine spatial planning. Before that, Law 3983/2011 had already incorporated the Framework Directive 2008/56/EC on Marine Strategy, but it had not any tangible effects on the protection of the coastal area. The importance of marine spatial planning is demonstrated by the fact that it is the process by which the competent authority analyses and organises human activities in marine and coastal areas in order to achieve the synthesis of ecological, environmental, economic, social and cultural aspects with the aim of promoting sustainable development.

However, the sustainable coexistence of uses and activities and their appropriate and rational land use planning in the marine and coastal area requires an integrated planning and management approach through the field of marine spatial planning, which is a bracket of the Integrated Coastal Zone Management. The lack of integrated management of Attica's coastal zone is, in my opinion, responsible - to a large extent - for the problems it is currently experiencing. The challenges for the country are expected to be

of great importance, if one considers that already Law 3851/2010 on the development of Renewable Energy Sources, and earlier, Law 3468/2006, allowed the installation of floating wind parks within the national maritime space [16].

6.3 Legal Protection Issues

The legal protection issues, which have been raised by the adoption of "zoning" legislation for the coastal area concerned and by the practice of the administration and private parties, have at their core the degradation of the marine and coastal space and the excess of its carrying capacity by the over-concentration of incompatible land uses and the violation of the integrity and quality of the marine ecosystem. Furthermore, a question arises as to the compatibility of the existing land uses with the Presidential Decree of 1/5.3.2004.

Moreover, the violation of the seashore's public nature and protective legislation through the extensive concessions of the right to use the beach and the seashore, makes it impossible for citizens to access the coastal area and cancels their public nature. The lack of approval of the Special Framework for Spatial Planning and Sustainable Development of the Coastal Area and Tourism is therefore of particular importance and should become a priority of the Greek state in order to address the legal protection problems, as well as the spatial problems which the survey highlighted, because it will help address and solve the contradictions, discontinuities and incompatibilities between the various sectoral uses (transport, tourism, housing, recreation, marinas, etc.).

6.4 Relevant Hellenic Council of State's Case Law

With regard to the jurisprudential treatment by the Hellenic Council of State of the coastal area's legal protection issues, the Court has consistently accepted that Article 24 of the Constitution imposes on the State, on the one hand, the obligation to protect the natural and cultural environment, and on the other hand, it imposes the spatial organization of the country, which is entrusted to the State. Those two obligations are clearly interdependent, so that there can be no protection of the environment without spatial planning and vice versa. Through its case-law, the Court has made a decisive contribution to the protection of the coast, the foreshore and the beach and the coastal ecosystems in general.

Moreover, the Court held, in essence, that the investment and development of the area of the former "Hellinikon airport" is lawful, while preserving the public character of the coastal front of the Metropolitan Pole and the Metropolitan Green Park, based on the consideration that the objective of protecting the environment and ensuring the best possible living conditions for the population, as enshrined in Art. 24 of the Constitution, can be achieved by linking the environment to economic development and, conversely, economic development can be sustainable when it is defined by respect for the protection of the environment. In any event, although the Court held that the Presidential Decree which established the Integrated Development Plan of the Ellinikon, in so far as it was challenged, did not infringe Art. 24 on the environmental protection, it nevertheless reiterated its case-law that, in any event, a deterioration of the inhabitants' living conditions and the land uses is tolerable, if it is necessitated by exceptional reasons of public

interest, following a balancing exercise by the formal or regulatory legislature, which is subject to marginal judicial review.

Apart from that, the projects for the development of the former "Hellinikon airport" and the regeneration of the Faliron Bay constitute, in my opinion, fundamental political choices which belonged from the beginning to the legislature and the state's administration. Therefore, the judicial review of related acts is "marginal" and it cannot reach the correctness and feasibility of these choices, as the Court repeated on the occasion of the Hellinikon case and the judge's intervention is limited to a narrow review of the extreme limits of the administration's discretion, that is, the search for manifest errors in the weighing of development prospects against environmental risks [17, 18].

The concept of sustainability and sustainable development is a legal concept and a general principle of international environmental law, as well as of the Greek Constitution [19–21], the violation of which is marginally controlled by the judge. In particular, as the Hellenic Council of State has held, in the exercise of the judicial review, which also includes the error of fact, the judge examines, inter alia, whether the environmental impact study, which is the basic instrument for applying the precautionary principle, meets the requirements of the law and whether its content is sufficient to enable the competent administrative bodies to discern and assess the consequences of the project or activity and to assess whether its implementation complies with the provisions of the relevant legislation, as well as with the constitutional requirements and the definitions of the EU Treaty.

However, the direct assessment by the court of the consequences of a project or activity and the assessment of whether its implementation is contrary to the principle of sustainable development are beyond the scope of the judicial review, because they require an examination of technical issues and a substantive assessment of the factual circumstances. It is certain that the Hellenic Council of State, following the evolution and transformations of the Greek state, the economy and society, will be confronted, in the coming years, with important issues of coastal protection.

In conclusion, coastal areas should not only be seen as recreational areas or transport routes with unlimited potential in terms of building and residential activity, recreation, tourism and navigation, but also as sensitive and finite ecosystems. Major urban redevelopments such as those of the Faliron Bay and the former "Hellinikon airport" demonstrate, in my opinion, that it is necessary to seek synergies between the public and private sectors in order to satisfy public interest objectives, one of which is the enjoyment of the coastal area by citizens. The need to make use of public property and the sustainable development of public property leads to the search for the point of optimum balance, where the combination of public and private interests, environmental protection, social welfare, preservation of cultural capital and economic development is achieved. It remains to be proven in the future and in practice the feasibility of the realisation of the gigantic investment of the former "Hellinikon airport" and the Faliron Bay and their sustainability, in case they are finally materialized.

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