

Panel abstract: The evolution of spatial planning law for environmental protection and climate transition

Section S23 Environmental Policy

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The current climate and environmental crises require numerous adaptations to our way of life. Many of these adaptations have consequences for the way we use scarcely available land. The land use claims made in the interest of the environment do not always enjoy public support and often collide with vested economic or social interests. Therefore, they present thorny regulatory challenges for which existing legal instruments are sometimes inadequate (VROM-raad 2009). The clash between environmental and economic claims on land has led to rethinking spatial law in a number of jurisdictions in order to make sure environmental degradation does not progress while infrastructure can still be built. This leads to tensions between the fundamental juridical notion of legal certainty and the increasingly vocal calls for a flexibilization of the planning system in which existing unsustainable but permitted uses of land can be regulated more strictly.

In this panel we are looking at regulatory systems in different jurisdictions to investigate and compare how they are dealing, or have dealt, with these particular instances of environmental/spatial conflict (Miller & De Roo 2000). Several systems are changing towards more flexibility, but the question remains whether the environment will truly benefit or whether economic interests will capture developments and unsustainable trends will persist or even escalate further.

Papers will be presented on the various tensions involved, for instance between legal certainty and the need to quickly adapt to new environmental conditions and broad participatory rights of citizens and the representation of the common good. In the Netherlands for instance a shift is taking place from plan led planning to development led planning which should make sure that land use is both efficient as well as sustainable. To that end a more horizontal partnership between the administration and project initiators is envisioned. In Germany, cities have regulatory authority to require (solar) energy production on roofs in new projects, and Norwegian regulators are discussing amending the law to grant the municipalities the same authority. In Poland attempts to open up the planning system have been met with criticisms that project developers have been granted a free reign and can now contravene municipal zoning plans at will (Załączna & Antczak-Stepniak 2022).

By tracing the history of and identifying current trends in the relationship between spatial planning and environmental protection, this panel will present an overview of a policy field that faces increasing polarization and juridification. The papers present both a descriptive view on the relevance of spatial law for environmental protection and climate transition as well as a normative perspective on what solutions would be preferable to shape current law and policy.

Papers to be presented:

- 1) Arnoldussen, Tobias, Esther van Zimmeren (2023): *Adaptive law, between flexibility, legal certainty and environmental justice.*
- 2) Hanssen, Gro Sandkjær, Tobias Arnoldussen, Katarzyna Szmigiel/Joanna Krukowska, Esther van Zimmeren (2023): *Institutionalizing developers rights and participatory rights in spatial planning law. How does it affect the climate transition capacity of the planning system?*
- 3) *To be invited*
- 4) *To be invited*
- 5) *To be invited*

References:

Miller, D., & de Roo, G. (2000). Resolving urban environmental and spatial conflicts: experiences from eight countries. In G. de Roo, & D. Miller (Eds.), *Resolving urban environmental and spatial conflicts* (pp. 1 - 12). Geo Pers.

VROM-raad (2009). *Dynamiek in Gebiedsgericht Milieubeleid: Ontwikkelen door Herschikken*. Advies 075, Juli 2009.

Załączna, M. & Antczak-Stępnia, A. (2022). „Lex Developer” in practice - the scale of application in the largest polish cities. *Real Estate Management and Valuation*, 30(4), 86-97.