

Legal analysis of the problematic associated with irregular urbanization of the countryside in Chile

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Abstract. Population growth has led to the increase of the urbanization of the countryside, which is a problem if not regulated properly. This can lead to the creation of new urban cluster and the subsequent use of large areas of agriculture land. Therefore, it is necessary to have a strong and clear legal framework that can adequately regulate and protect the countryside and rural areas. This paper studies the Chilean public and administrative laws that regulates the creation of new rural residential plots and the mechanism that are employed by private for sale and construction of illegal rural residential plots and urban cluster on the countryside. For this purpose, it was initially identified the normative that allows the rightfully creation of new parcel and urban clusters, and the different governmental entities that have jurisdiction of this process. Later it was analysed the jurisprudence through the study of emblematic cases; two penal process, two civil cases, and two administrative proceedings. The main mechanism employed was the sale of rights to a percentage of the rural residential plot and/or the inadequate interpretation of a law used for the regularization of the site after five years construction. As a result of these irregularities, it was possible to observe that the urbanization projects are located on exclusive agriculture land and in some cases areas that were declared as risk areas. Therefore, this housing complex don't have construction permits, municipal reception and unauthorized utilities. As a result, these urbanizations don't possess the minimal required national standard, are considered as unauthorized urbanization, and cannot be registered with the real estate registrar, therefore the individual doesn't own the property.

1 Introduction

Population and economic growth have been linked to the increase in urbanization [1,2]. Traditionally urbanization has been referred as a shift of the agriculturally based population toward concentrated population centers in larger and denser urban settlements, that are non-agricultural industries focused [3,4]. As a result of these migrations, it is possible to observe changes in the social structure, economic level, and environment where these movements occur [5-7]. These changes can be linked to an increase in the generation of waste and

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pollution, with the resulting of the degradation of the surrounding environment, the decrease in the ecosystem quality due to the land use [6,7]. Additionally, mayor health problems are associated with urbanization that can included poor nutrition, health problems related to an increase in the environmental pollution, and sanitation problems among others [8,9].

It is important to note that with the increase in the economic growth, there has been observed that there is a turning point when a counter migration is observed. This phenomenon corresponds when part of the population starts to migrate to rural areas and the countryside [10,11]. This trend corresponds to a counter urbanization, that can be explained when people tend to favor parcel near urban areas and urban centers in rural spaces, rather than countryside [12-14]. These movement can be considered as a small-scale process, where habitants choose to move to rural areas looking for better conditions [15,16]. As a result of the social, economic, and environmental problems, that are consequence of urbanization it is necessary to have a structured legal framework that can coordinate the adequate development of the rural and peri-urbans area. This will permit a coordinated the growth of these areas between privates and local governments [2,17,18].

In the early 2000s Chile experienced an increase in the division and subdivision of rural land that were in non- urban and suburban areas [19]. This phenomenon increases between the years 2002 to 2017. This led to an increase in irregular urbanization of the countryside in Chile, which the resulting the lack of public utilities, non-existing public and private service, lack of infrastructure. Therefore, there is need to study which mechanism that were employed by privates and companies in the sale and construction of irregular rural estates and rural urbanization.

2 Method

For identifying the mechanism that are employed in the sale and construction of illegal urbanization in the countryside, legal framework that regulates urbanization in Chile was study. It was analysis the requirements for subdivision of land in rural areas and the different governmental entities that regulates the process. One of the main components was establish what is understand as irregular or illegal urbanization on rural areas. Due to the extent of the mater the research was focus on the subdivision and sale of rights to a property.

A case study was performed by analyzing the jurisprudence though the study of emblematic cases; two penal process, two civil cases, and two administrative proceedings. By comparing the law and the study cases it was possible to determine the mechanism employed by privates and companies for the illegal sale of property rights and the legal consequence for the offenders.

3 Chilean regulatory framework for rural areas and countryside

The following regulatory framework analysis focus on the regulation that governs the permits and construction of rural residential and countryside in Chile. The main norm that governs urban planning in Chile is the DFL 458/1975 (General Law of Urbanism and Construction) [20]. This law dictates the principles, attributions, power, faculties, responsibilities, rights, sanction, and other norms that govern the organisms, officials, professionals, and participants, in the process of urban planning, urbanization and construction. Additionally, DS 47/1992 [21] complements the General Law of Urbanism and Construction (GLUC) by regulating the administrative procedure, the urban planning process, the urbanization process, the construction process, and the technical design and construction standards.

With respect to GLUC in article 29 it establishes that the Ministry of Housing and Urban Planning is the only public organization that can set standards for urban planning and its design. In article 34 it defines the urban planning in two levels, intercommunal urban planning,

and urban planning, these regulates and guides the physical development of urban and rural areas in Chile. Finally in article 41 it is establishing the urban planning at the communal level, sectional and urban limits [20].

The DL 3.156/1980 establishes the norms on the division of rural properties [22]. It defines that a rural property corresponds to plots of land that are destined to agriculture, livestock, and forestry, due to being located outside the urban limits. Also, in article 1 of DL 3.156/1980 it defines that these plots may be freely divided by the owner if the resulting lots have a minimal surface of 0,5 hectares. It is important to note that this division does not include the incorporation of roadworks, percentage of green areas or any type of urbanization. Additionally in article 1, the resulting properties from the subdivision are subject to the prohibition to change their use in terms established in articles 55 and 56 of the GLUC.

Therefore, when subdividing and urbanizing a property, the article 55 of the GLUC applies, the resulting surface can be less than 0,5 hectares. One exception to the minimum surface area subdivision correspond to Regulatory Plan of the metropolitan Region, which permits partitions up to 4 hectares [23].

With regards to the last an official letter from the Reginal Ministerial Secretariat of Housing and Urban Planning of the Libertador General Bernardo O'Higgins to the Reginal Comptroller "The purpose of the prohibition is to protect rural property by preventing the division of smaller areas than the authorized and the resulting change of land use" [24].

In the article 2.1.5 of the DS47/1992, it is defined the territorial planning instrument. This instrument defines the urban limits, and everything not included, it is considered as rural. Additionally in the Decree 19/2020 it is defined as rural territory where the population density is lower than 150 inhabitants/km² and that the maximum population is 50,000 inhabitants [25].

4 Origin and classification of irregular urbanization

The DL 2695/1979 establishes norms to regularize the possession of the small property and for the constitution of the domain of it [26]. This allowed the regularization of titles by prescription, making it easier to obtain a real estate property title. The initial intention was the regularization of the domain of agricultural land plots and urbanization nationwide that did not have a legal title. The requirements by the law were:

- Have material possession, without boundary problems, for at least 5 years.
- The property must not have a fiscal value greater than 800 UTM if its rural or 280 UTM if its urban.
- The property must have clear demarcation and they must be accepted by the newborns.

This law has considered a controversial norm, to such extent that was referred as the "Thief Decree" [27]. The preview name was due to the misappropriation of real estate that belonged to third parties, and the proliferation of irregular urbanization. Therefore, the norm had significant modification in the years 1982, 1996 and in the 2018 the government issue the Law N° 21108 that addressed the irregularities [28].

With respect of the subdivision and urbanization of the soil, article 65 of the GLUC establishes three categories:

- Subdivision of the land: without the need of new urbanization works since the existing ones are sufficient.
- Subdivision of the parcel: conditioned to the execution of urbanization works, including such as the opening of new streets, and the creation of new neighborhoods or towns.
- Urbanization of existing parcel: who's sanitary and energy infrastructure, and pavements were not carried out in a timely manner.

From previous classification, it is possible to deduce that the irregular urbanizations would be part of the second and third groups.

Additionally, the Ministry of Housing and Urban Planning has generated an internal classification of irregular urbanization:

- Irregular parcel and illegal occupation and construction: the inhabitant illegally occupies the land, for construction an “second home” or a vacation hose, where the plot has been irregularly divided and has generated more sites and roads. In some cases, the land is own by the government and some cases by privates.
- Irregular subdivision with sale of rights to a property: it occurs when the owner of a property located in a rural area makes an irregular subdivision of the plot without any type of approval, selling rights over the supposed site. These sites do not comply with article 55 of the GLUC or DL 3516/1980, and they do not comply with the minimal surface required by law.
- Irregular subdivision of rural area for housing purpose: this corresponds to a division of rural land that complies with the DL 3516/1980, and they meet the minimum area required, but they start to form a urban center.

For this research, the study will analyze only the Irregular subdivision with the sale of rights to a property.

5 Case analysis

The case analysis has the purpose to show how the issue of irregular subdivision in the countryside has been address in different ways by the Chilean law. For these it was analyzed the civil, penal and admirative cases, and the importance of each of the processes. These will permit determine the legal and administrative shortcomings that contribute to the proliferation of these illegal subdivisions. The objective is to observe how efficient the Chilean state has been, how to avoid these cases, and how to contain or solve these irregularities.

5.1 Penal case La Serena

This penal case is the first case of its kind in which the guilty parties were sentence to prison for the crimes prescribed in article 138 of GLUC. In this article it is established that it will be sanctioned with imprisonment the owner, landlord or developer who performs any acts or contracts whose ultimate purpose is the transfer of ownership, such as sales, sale promises, site reservation, lot awards that goes against what is establish in this article.

The initial illicit was generated through a property brokerage company, where the defendants acquired agricultural land outside the urban limit. These sites were lawfully registered with the Real Estate Registrar because the properties complied with the minimal area require. However, later each of those 5000 m² plots of land (original property) was “fictitiously” divided, generating several smaller properties that were displayed in a “private plan”. It is important to note that these subplots are of an illegal nature. The illegality consisted in the division of the properties whose surface area is smaller than the minimum property surface area allowed by the respective planning instrument. These divisions were not subject to the exceptional procedure contained in article 55 of GLUC.

The fictitious plots were exhibit to the public as part of the real estate business through advertisements. The seller offered these new plots as part of a future urbanization and were sold before the completion of the urbanization infrastructure was finished. The above had the purpose of generating trust and misleading the buyer, therefor bien an intention to defraud since the buyers. The buyers believe they are acquiring a plot of land, in circumstances that

what there being sold are “rights” of an “original property”, which the sellers translate into a private urbanization.

A promissory purchase and sale contract “of rights” are drawn up, where a part of the price is paid, stipulating that the material delivery of the site is subject to the payment of the balance. These contracts lack legal formality, they are carried out through private deeds, with the knowledge on part of the sellers that there can be no delivery lined to an assignment of rights. Given that the rights that are traded fall on the entire property.

The buyers are deceived since at the time of signing this “private deed” the “original property is identified and is register at the Real Estate Registrar. When signing the deed, it is specified that the land is an agricultural land, with a prohibition of change of use, that there is no embargo and other legal jargon. All the above gives an appearance of legality in front of the buyer, what they are unaware of is that the rights they have acquire over the original property cannot be translated to the “plot or right” where the supposed sit they intend to acquire is plotted. Given its illegality this right cannot be recorded before a notary and in not eligible to be registered in the Real Estate Registrar.

As a result, the Tribunal judge that a crime if transcendent intent and withing these, specifically, would find ourselves before a crime that has been designated as a severed result. This is due that the conduct of this type, which is in the irregular subdivision and transferring of the domain, the active subject must make the transfer with the aim or tendency to generate new urban clusters, being independent if those clusters are created or not, they might not be created for some other reason, but the crime of irregular subdivision exist anyway. This is because they precisely distinguish it from a material or result crime, since the populations formed is not a criminal requirement, it is only the tendency to form them [29]

5.2 Penal case Quillota, Loteos Papudo

The Public Ministry of La Ligua presents an accusation before the Quillota Criminal Court for the irregular subdivision and fraud in case RIT 19-2016 [30]. Unlike the previously expose case, the peculiarity of this ruling is that the court exonerates the accused. What is interesting is that the defense argues their innocence and not only analyzes de depth of the flaws in the law that rise to the criminal offense of article 138 of GLUC. Additionally, the defense transfers the blame to the complainants, pointing out that they are ones who have broken the law, by transgressing an administrative rule that is the one that imposes that to build they must request the corresponding building permit.

The defense held that “as regards the crime of fraud, there was no sufficient and apt to cause an error in the victim in this case. As for damage, there is no economic damage. These arguments were based that in article 135 of GLUC refers to the final reception of the urbanization works. In the case of articles 136 and 137, they refer to the fact that if all these works have not been completed, the people who are urbanizing cannot carry out acts tending to generate new urban clusters. Therefore, these prohibitions refer to those who have started the urbanization. This is since article 136 speaks “as long as they have not been completed” [30].

Additionally, the defense states that the crimes described in article 138 of GLUC, will punish the owner, landlord and developer. These is because the law clearly defines the owner and the developer but doesn’t define the subdivider. Therefore, the ruling and the exoneration the accused.

5.3 Civil court case La Ligua

This case begins when the Real Estate Registrar refuses to register a contract for the sale of rights, in circumstances that previously had carried out several inscriptions without raising

any objection. The change in the criteria, can be seen in the ruling, it was due to the material verification of a series of irregularities by several administrative organ of the state, that are brought to the attention of the conservator.

This is the first time in Chile that it is observe how the conservator exercising an inspection role, coordinates with the state to avoid the generation of an irregular subdivision.

The civil court case ruled in favor of the legality of the act of the Real State Registrar of La Ligua, regarding its refusal to register a contract for the assignment of rights signed before a public notary. This is in accordance with the provisions of the article 136 and 138 of the GLUC and the Intercommunal Regulatory Plan “Satélite Borde Costero Norte” and what was reported by the Municipality of La Ligua in the Official Letter N° 572 on irregular subdivision [31].

The importance of this ruling lies in the harmonious interpretation of all the functions of the Real Estate Registrar, regarding compliance with urban regulation. This, since it not only focuses on the sanction contemplated in article of GLUC, but also reinforces the role of this institution, through the powers of the conservator the generation of irregular subdivisions.

5.4 Civil court case Chillán

On this occasion, it is the State Defense Council that files the claim against the claim against an irregular subdivision in accordance with the article 3 of DL 3516. At the request of the Council, all the organization involved will exercise the annulment actions that may be appropriate. The court of the Second Civil Court of Chillán in the case established that the defendants form a community, but in fact this does not have the character of such, since in each of the rights assignment contracts, they were physically individualized, assigning each assignee a specific space with determined dimensions, and prices location that is made with the specification of the “lot” that corresponds to each one [32]. In this case it was concluded that the legislator penalizes the acts and contracts performed with regards to the violation of the DL 3516/1980 with absolute nullity, having to understand that this includes not only those that violated the regulations, but also those with which the same purpose is achieved. That is, those acts by means of which, in practice, the subdivision of a property is varied out without meeting the legal requirements, as has occurred in this case, since this accounts for fraud against the law. In this regard the court express “There is fraud against the law when by real and voluntary acts, although sometimes without necessarily fraudulent intent in the opinion of the majority, an apparently legal situation is created, in fact, in accordance with the law, taken literally, but which has the effect of violating the spirit of the law.

As a result, the tribunal order:

- The cancellation of the inscriptions made in the Real Estate Registrar of Chillán, and all those that derive from them.
- The return of the amount paid for the agreed price in the contracts for the assignment of rights whose nullity has been declared.
- The destruction of fences and gates that mark the subdivision of the property.
- It is ordered to pay the costs of the case.

5.5 Administrative case la Ligua, subdivision under a state of constitutional exception (state of emergency)

In this case, a private requested the Municipality of la Ligua to apply article 43 of the Law N°16282/1965, for the approval of the allotments plans and subdivision of a property. The previous la correspond to the faculties in case of state of emergency. Article 43 estipulate “In the municipalities that are declared affected by an earthquake or catastrophe, the Municipalities may proceed to final approval of allotment plans and subdivision of properties

belonging to legally constituted cooperatives or communities or in which there are in fact low-income housing, even when said properties do not have urbanization other requirements demanded by GLUC or the respective municipal ordinances, and even when these populations are located outside the urban radius of the respective communes, all without prejudice to the to the corresponding criminal liability” [33].

With regards to the last, the person who can prove they have acquired a property in any of said urbanization, may request from the owner of the land in which they are located, that they be granted a definite title deed. In case of refusal by the current owner the respective deed of sale. The interested party may request the corresponding in the local court, to declare his right, which must proceed briefly and summarily, and failing in conscience and without further recourse.

The antecedents with which the private justified the case were the DS N° 308, dated 08/20/2019, of the Ministry of the Interior and Public Security, where the area was declared zone affected by catastrophe derived from the prolonged drought and the DS N° 107, dated 03/20/2020, which declared as areas affected by Covid-19 catastrophe, the 346 municipalities and the corresponding 16 regions of the country. Therefore, this case corresponds to the constitution of an irregular subdivision in a scenario that is allowed in an exception period, whose application seemed to be completely legal and adjusted to the law.

The Municipality of La Ligua, questioned that the urbanization located in rural areas, but with more than 500 m², which is what states the DL 3516/1980 requires as a minimum area for a division in these areas, and they were the object of rights sales, in different percentages. As a result of the inquiry, the Municipality asked the General Comptroller of the Republic, which ask the Undersecretary of Housing and Urban Planning, to clarify the doubts that the Municipal entity has about the appropriateness of applying the Law N° 16282. Regarding the above, the Undersecretary stated that “there the one who holds legal guardianship over the concepts or terms of the GLUC of its Ordinance that are contained in other normative bodies, so that any referral to the Law 16282 carried out in terms of urban planning and construction is necessarily within the scope or the Urban Development Division (UDD), because article 4 of the GLUC alludes to the “provisions” of the GLUC and these provisions also appear in the Law N° 16282” [34]. In other words, the legal source of words such as “plots”, “subdivision”, “property”, urbanization”, among others, are defined in the GLUC and the DS N°47/1992 since these terms are not specially defined in Law 16282/1965.

The relevance of this guardianship lies in the fact that the UDD would have the necessary power to interpret Law 16282/1965, given that the concepts contained therein are of its concern and to evaluate whether in cases like this one that is submitted to its consideration by the General Comptroller, it would or would not be appropriate to apply certain precepts of that law.

As a result, the UDD indicated that it was not in the presence of a legally constituted community, but rather before what we call an “irregular subdivision”, which materializes with the acquisition of rights to the property, and which is intended to regularize through the Law 16282/1965, regardless of compliance with current urban planning regulations.

5.6 Administrative case in La Reina “Loteo Carpay”

This case could be considered an iconic case, at least as far as the jurisprudence of the General Comptroller of the Republic is concerned, since it seems to be the first case of irregular subdivision. This case is so old that it no longer appears on the website of the General Comptroller and at the internal level of the UDD it is estimated that is one of the first to report of the existence of an irregular subdivision the problematic associated with it.

It is a property whose origin is rural and is subdivided irregular, the product of a mistaken interpretation of the DL 2695/1979, as will be explained later. Subsequently, these

subdivisions are incorporated into the urban area, being governed by the Metropolitan Regulatory Plan of Santiago and by the Communal Regulatory Plan of La Reina, in such a way that they must be subject to the provisions contemplated in those planning instruments and those established in the GLUC and the Ordinance.

Once the subdivision is incorporated into the urban area, and the requested of building and urbanization permits before the Municipal Works Manager of La Reina, it evidenced that the property division, which materialized at the time had no legal validity. The problem is dealt with the Dictamen N° 029987 de 28.06.2005 of the General Comptroller of the Republic and originates from the complaint of the individual against the Municipal Works Manager, who would have refused to grant the corresponding certificates for development and constructions permits for approximately 75 plots in the Carpay sector. The organism argued that the place is not properly urbanized, and it is accesses by a right-of-way. The Ministry of Housing and Urbanism reinforced the opinion of the Municipality, by arguing that the residents of Carpay must obtain the urbanization permits and the building permit in accordance with the provisions established in the GLUC.

Additionally, the Municipality stated that the Carpay subdivision is entirely private, and that various fines have been filed against the appellants for having “built and/or urbanized without the corresponding permits”. It adds that it could not verify the existence of the subdivision.

It was indicated that the disputed lands, at the time were in rural areas, and were accepted the provisions of the DL 2695/1979, which sets the rules to regularize the possession of small real estate and for the constitution of domain over it. It is important to note that the previous norm establish the ownership of the land in rural area, the owner can then register the land in the respective Real Estate Registrar. The Registrar can only register the possession of the asset that was regularized individually. The forgoing implies that those who were owners of the land, by applying the rules contained in the DL, come to have the category of owners, provided that the requirements indicated in that regulation are met. The last doesn't mean that the constructions carried out on those lands created irregularly have also been regularized because of the application of said Decree Law. Thus, the fact that the owners of the properties in question had accepted said regulation did not imply that the existence of the division of the property was validated.

It should be clarified that the second paragraph of article 31 of DL 2695/1979, mentioned in the Comptroller's report states that it will not be understood that there is a division when the regularization of possession or the constitution of domain of the property that forms part of a larger one. Therefore, in the case, the fact that the owners of the lands accepted this regulation did not imply the legal division of the property as a whole.

It is necessary to emphasize that on the date on which ownership of the properties were regularized by application of the DL, they were in a rural enclave, but later the land was incorporated into the urban area. In that moment the Municipality of La Reina requires the owners of the land to comply with all the necessary regulations to build and urbanize the land, since these were becoming integrated into the urban area. This land was lacking urbanization, in circumstances that the accesses would be materialize through an easement granted by a third parties, which prevents issuing building permits that are requested in accordance with the current legislation of the time.

The Municipality of La Reina stated that the Loteo Carpay is entirely private, it is indicated in the opinion that the municipality filed several fines against the appellants for having built and urbanized without the corresponding permits.

The Comptroller's office stated that the registration in the Real Estate Registrar was carried out irregularly, since the subdivision plan that was given was never approved, only the possession of the lots was regularized individually. The fact that the properties had been accepted by DL 2695/1979 didn't imply that was a division of the property as a whole.

Additionally, the Comptroller concludes that in Carpay sector, the Paidaha Oriente subdivision was register irregularly with the Santiago Real Estate Registrar. It adds that “the constitution of ownership over properties in question was regularizes, which on that date were in a rural enclave, in accordance with the provisions of DL 2695/1979, the norms on subdivisions of urban properties contemplated in the GLUC and the Ordinance are not applicable to them, in accordance with the provisions of article 31, second paragraph of said decree.

It is possible to conclude that there is evident a great urban problem that generates an irregular subdivision that is later incorporated into the urban area, not only because of the impact that occurs in the territory, by incorporating land lacking urbanization and with buildings that do not comply with the regulation that urban planning has imposed for a given area. Also, because the acquired rights of those who parceled out and build in what was a rural area are affected in accordance with the norm that empowered them to do so. According to the rules in force at that time and bases on which they didn’t need to urbanize also being building permits well granted.

6 Conclusion

It is possible to conclude that there is evident a great urban problem that generates an irregular subdivision that is later incorporated into the urban area, not only because of the impact that occurs in the territory, by incorporating land lacking urbanization and with buildings that do not comply with the regulation that urban planning has imposed for a given area. Also, because the acquired rights of those who parceled out and build in what was a rural area are affected in accordance with the norm that empowered them to do so. According to the rules in force at that time and bases on which they didn’t need to urbanize also being building permits well granted.

The importance of the cases analysis lies in the fact that it was possible to understand the role played by the State in the generation of irregular subdivisions.

In the penal case in La Serena, the court hears the problem of irregular subdivision mainly through complaints of fraud by individuals against the people linked in the sale of the real estate. In this case, it was established the jurisprudence by identifying certain protected legal assets, which violated the natural and legal person linked to the real estate sector, namely, property brokers, that when promoting the properties to be marketed, misrepresent their original characteristics through deceit when promoting properties with demarcations that are not such. The signing of promise-to-purchase contracts, either between a construction investment company and an individual, to settle quotas or land rights, which translate into a “plan” that is legally nonexistent. As a result of the ruling, it is not feasible for these quotas to physically materialize in a real estate that has not been subject of a partition, which entails that future purchasers occupy a portion of land demarcated in a private plan and ultimately intend to build under the assumption of operating in a manner adjusted to the law by holding a property right.

In this way, the accused infringes what is established in the articles 136 and 138 of the GLUC, by subdividing without urbanizing and by forming urban cluster without meeting the requirements for it, respectively.

On the other hand, the case “Loteos de Padudo” differs from the previous one, since the defendants prove that their actions were only aimed at selling rights without implying the division of the land, arguing that they are nor responsible for what each person does with their land rights. The normative interpretation carried out by the court is insufficient to repair the damage caused by those who bought the property and built it without submitting to the procedure established in article 55 of the GLUC. Therefore, without the requirements and the

corresponding permits since those who have purchased such shares or rights in some cases have built and have done so fully aware that they required permits.

As a result, the court does not come to the conviction that the defendants are actually within the criminal category, and this sheds lights on the shortcomings of the norm with regard to the clarity with which the crime that appears therein is typified. In that order, the court does not condemn for not reaching “the conviction that the punishable act of the accusation was actually committed, and that the defendant had a guilty participation in it and punishable by law”. In the civil court case of La Ligua, the court hears this case due to a claim by an individual who alleges against the Real Estate Registrar, by refusing a registration of sale of rights over a property, in circumstances of having authorized others of the same nature as the one requested. In this case, there are several government agencies that identify that there would be the generation of an irregular subdivisions, and they show how the various offers for the sale of rights did not meet the minimum surface requirements.

In the civil court case of Chillan, the intervention of the authority was enough for the court to exercise the annulment actions referred to the article 3 of the DL 3516/1980. As in the previous case, we are faced with a successful inspection, since the civil actions resulted in the annulment of all assignments or rights, in addition to ordering the demolition of buildings and fences.

If we compare how efficient the penal and civil cases were in avoiding the generation or proliferation of irregular subdivision and how it was able to contain its effects, we can observe the criminal court the regulatory flaws of the article 138 of the GLUC are very evident. While achieving an interpretation of the provision by the judiciary that tends to prove the conduct described, and that implies that the containment of the effects or an irregular subdivision may not occur. If the tendency to form populations cannot be accredited in accordance with article 138 of the GLUC, the existences of urban nucleus outside of planning is questioned, the domain transfers are valid and with this acquired rights are inevitably constituted by the holders of rights over a property, for which reason it is impossible to contain the effects of irregular subdivision and even less eliminate it. Additionally, the results are mor efficient, both to avoid the materialization of irregular subdivisions and to eliminate their effects. The analysis of the norms that impose the execution or urbanization works to carry out the actions indicated therein.

With regards of the Carpay administrative it a clear example of the intervention of the state after the formation of an irregular subdivision, where, in summary, in the face of irregular subdivisions generated in a rural area that later is incorporated into the urban radius, the Comptroller’s Office clarifies that any act that is exercised on those properties must abide by the regulation stated in the law

As a result of the analysis of the cases, it is considered necessary that the different state organization coordinate in order to achieve effective control. Materialize in a legal instrument, for example, in a joint resolution issued between the different actors among the state. In order for there to be a clear guideline to address between the different agencies, the way to proceed to avoid the formation of an irregular subdivision, establishing clear protocols on how a coordinated action should be carried out.

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