

Study on Illegally Built Objects and Illegal Development in Montenegro

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EXECUTIVE SUMMARY

The current **Study on Illegally Built Objects and Illegal Development in Montenegro** is compiled for the Statens Kartverk.

The objectives of the study are to:

1. Provide an in-depth analysis of the situation (origin, causes, impacts, size of the problem, type) of informal development in Montenegro.
2. Investigate the policy framework and the strategies (housing policies, access to land and ownership) and tools (property registration and planning systems, legislation for legalization / upgrading) used for the legal integration and the environmental upgrading of informal urban development, and practices (citizen participation, penalties, fees, demolition, monitoring of environmentally sensitive areas) to improve transparency and prevent future informal development, eliminate the impacts and improve the livelihood of urban poor and low income people living in informal houses.
3. Give recommendations for improvements and solutions, *in order to facilitate growth* through the operation of efficient, transparent, and formal land market and safeguard the environment. This activity should develop public and transparent policy and directions on improvement of the legislation and the current situation in relation to the process of identification and the process of legalization/treatment of the illegal buildings in Montenegro, and should provide other countries with useful knowledge and better understanding of the complex informal development issues.

In brief, the research has identified the following:

Montenegro is a country of special natural beauty that is recognized by its Constitution as an “*ecological*” country. Natural and cultural beauty of Montenegro attracts tourism and international real estate market interest. In the territory of Montenegro, destructive earthquakes were often related to large movements of rocks (land-slides, erosion of rocks), floods, avalanches, regional fires and other natural hazards. The various ethnic groups of Montenegro are: Montenegrins (Crnogorci) 43%, Serbs (Srbi) 32%, Bosniaks (Bošnjaci) 8%, Albanians (Albanci - Shqiptarët) 5%, and other 12% which include Muslims (Muslimani), Croats (Hrvati), and Roma; according to UN reports, Roma are the most marginalized ethnic minority in Montenegro. Improving the plight of Roma is one of the toughest challenges faced by the country.

During 1993, two thirds of the Montenegrin population lived below the poverty line. Currently, the economy of Montenegro is service-based and is in late transition to a market economy. Tourism is an important contributor to Montenegrin economy and government expenditures on infrastructure improvements are largely targeted towards that goal. Montenegro has experienced a real estate boom in 2006 and 2007, with wealthy Russians, Britons and others buying property on Montenegrin coast. Montenegro received, as of 2008, more foreign investment per capita than any other nation in Europe. However, there are significant differences in the extent of poverty in the region between the northern and other parts of the country.

The “first generation” of informal development in the area is dated since the era of socialism. In the former Yugoslavia land was under state control. Despite the ambitious social housing projects there has always been a lack of state funds for housing purposes. This need was increased due to the natural disasters that happened in the region. Since mid-90’s huge changes have had an impact on the urban development of Montenegro. After the independence a combination of major reasons, such as poverty, internal and external migration as an impact of wars and sanctions on the state economy, no clear property rights, no credit system, and the out-dated centrally driven and bureaucratic planning (with no public participation), created a boost of illegal settlements in Montenegro. Displaced people and refugees have moved in. The “self-made” housing solution, built on state land, acted as the only alternative to inadequate state social and/or affordable housing. According to the UN ECE report of 2006, single-family houses are predominant in Montenegro; apartment buildings are generally considered to be problematic in terms of management and maintenance; over 6000 households, many of which are Roma, live in substandard dwellings (slums).

Most of the new housing is illegally constructed. Informal settlements in Montenegro are a dominant feature of urban development; more than 80% of the houses and apartments in Montenegro fall under the term “illegal”, either constructed completely without a building permit on state land and/or beyond the specifications of the permit. Illegal objects are located in all types of land (private or state land); they vary in terms of standard (from slums to luxurious residences), location (from suburbs to city cores and protected areas), use (from residential, mixed, or commercial) and size (from several small units to over 70 ha settlements; from small guesthouses to large hotels). There are no reliable estimates available about the total number of illegally built objects in the country. According to unofficial data the number of informal structures is 130,000 (source: UNDP) and they are mainly concentrated in small and medium settlements all over the territory.

The identified causes of illegally built objects in Montenegro vary but in general they are a result of one of the following conditions:

1. internal and external migration as an impact of wars and sanctions on the state economy, poverty and inadequacy of the social housing; lack of access to affordable land and housing;
2. emergency response to housing needs due to natural disasters (earthquake);
3. inability and unwillingness to pay communal taxes;
4. complicated procedure for refugees and the various minorities to obtain citizenship and land use/ownership rights on land;
5. inefficient administration;
6. unclear situation for privatization of land to the citizens and delay in the restitution of property rights;
7. incomplete cadastral maps, no available information about the registered private property rights;
8. lack of affordable housing policy;
9. out-dated centrally driven and bureaucratic planning (with no public participation and no respect of existing private property rights); lack of detailed city plans; lack of serviced urban land; state controlled and extremely bureaucratic planning that aims to “control” development through numerous

- field inspections instead of purely facilitating growth; lack of funds; lack of personnel; expensive and cumbersome procedures for building permits;
10. weak professional ethics;
 11. misuse of power; speculation and corruption;
 12. ignorance of existing regulations;
 13. local and international market pressure.

Land Administration

The fiscal Inventory Cadastre, established in the 1950's, provided records of self-declared information -about parcel area- by the "current possessors", not accompanied by any documentation or map and not checked by the authorities for correctness. Since 1958, the state nationalized all urban lands; the state took ownership rights from the owners and offered them rights to use the houses. The Land Cadastre, in 1976, provided improved information about parcels and their owners and users/social owners related to cadastral surveys produced by geodetic and photogrammetric means. Buildings are recorded (up to the ground level) on maps and accompanied by records of apartment users. Since 1988 the Real Estate Cadastre was introduced in Serbia and Montenegro which today covers 65% of the territory of Montenegro with cadastral maps; in areas not covered by the Real Estate Cadastral maps the two other earlier cadastral records are still valid. According to the WB Doing business 2012 report globally, Montenegro stands at 108 in the ranking of 183 economies on the ease of registering property. It is mandatory that each sale-purchase agreement is notarized; authentication of contractual parties' signatures on the sale agreement is done by the jurisdiction of basic courts.

Until recently, illegal constructions could be registered in the cadastre as an encumbrance, as long as the occupants had the Montenegrin citizenship and a use right/permit on the land parcel. According to a new Law which defines that only a building for which a use/occupancy permit has been issued may be registered in the Real Estate Cadastre, which implies previously issued building permit, illegal buildings cannot be registered in the cadastre any more.

An emphasis is given by the state on the cadastral mapping of the territory and not on the privatization of land and registration of ownership rights; people, too, are not especially interested in transforming the use rights into ownership rights unless they need to sell. In 2004 the Law on Restitution of ownership rights passed in Montenegro but its implementation is doubtful (UN ECE, 2006); transfer of use rights into ownership (both in urban and rural areas) does not require purchase of land for those who fulfil the criteria and have acquired citizenship. However, former owners who during the socialistic era transferred the property rights into public, state, social, or cooperative ownership by a legal transaction or unilateral document, are not entitled to restitution or compensation. Also, large land complexes that are considered to be of significant value for the state are exempted from restitution; expropriation is supposed to take place instead - there are no available data on the amount of such expropriated private lands or on the amount of compensation provided. In urban areas, if private land is taken for planning purposes it is not expropriated in a fair value; the common practice is to offer state bonds of lower value than the purchase value declared on the contract. Such state bonds may be sold for 20-30% of their value in the market, or people may gradually exchange these with their electricity bills.

The percentage of abandoned rural land and of state owned land is great; to a small extent, state land is being auctioned by the Directorate for Real Estate of Podgorica for real estate development purposes. Many refugees lacked Montenegrin citizenship and had no access to property rights; citizenship law of 2008 grants citizenship to the refugees under certain criteria. Since 2009 foreigners can acquire real property in Montenegro and have ownership rights like the locals; however, in agricultural areas they are offered long-term leasing instead of ownership rights. Unfortunately, until today cooperatives still exist in the rural areas. In such areas legal rights on land are not reconstructed, land is not used properly and this has a huge impact on the good functioning and the productivity.

According to the previous spatial planning legislation and until 2008, in the rural areas (where no detailed plans exist) both rural houses and agricultural facilities did not need a construction permit. Instead a *letter of acceptance* of the construction from the municipality was sufficient. According to the new spatial planning law all rural constructions are considered to be illegal and must be legalized but as there are no detailed plans available, this will be delayed more than 2 years. This creates mess in several municipalities and serious delays to the WB rural investment projects, too. Property registration, transfer and mortgage, as well as access to investment and development projects in the rural areas should be treated and facilitated independently of any planning needs, informalities or illegalities.

Average monthly income in Montenegro is ~518 EUR (net). Paying taxes is not within the people's mentality in Montenegro and in the greater region as well; it is also a question of affordability considering the average annual income of middle/low income families; it is estimated that roughly only 20-30% of the real property owners manage to pay their property taxes; the tax rate on real estate transfers was raised from 2% to 3% on the 7th of January 2008. Increase of tax rate on real estate transfers may have a negative impact on real estate market though.

Occupants of illegal buildings, if registered in the cadastre, are expected to pay property taxes as well. Buyers of those illegal buildings that are registered in the cadastre are expected to pay the transaction taxes, too. Those not registered do not pay annual property taxes. Recent law which defines that only a building for which a use/occupancy permit has been issued may be registered in the Real Estate Cadastre, has a significant impact on the economy. Since 2003, by Law, real property annual tax revenue is collected by the municipalities; the buyer is supposed to pay the transaction property tax. In the past the buyer was expected to pay the tax in advance, prior to his/her registration in the cadastre; today, this has been reversed; if the buyer fails to do so the tax office can register the debt to the cadastre as a mortgage on the real estate.

The profession of notary did not exist in Montenegro until the 25th of July 2011; "Real estate agent" companies and individuals served the market; the usual fee for matching a buyer and seller is 3% of the sale price. Citizens of Montenegro and displaced refugees are emotionally attached to real property, especially to land; this resulted in a weak land market both within urban and/or rural areas. Many homeowners' units are shared with tenants, sub-tenants or relatives. Collection of maintenance fees in the multi-family buildings is poor (only 10-14 per cent of owners pay). Often, in case of emergency repairs in such buildings, the municipalities have to

finance the difference. Illegal buildings, if registered, can be sold and/or mortgaged depending on the bank's agreement (usually banks do not mortgage illegal buildings unless the applicant owns the land and the value of the land covers the loan). Real estate market suffers major weaknesses due to the above land policies. Private real estate agents identify the following weaknesses of the system that create fraud:

- (a) basic courts are usually overloaded by a variety of cases;
- (b) basic courts are not well organized and therefore access to court records to check if the property has been sold but not yet registered in the cadastre is impossible;
- (c) entrance to the cadastral records is only possible by the name of the owner not by the object; this requires more effort to identify the particular property under sale;
- (d) cadastral offices are inefficient and delay the registration process.

Planning and building permitting

The responsibility for planning and construction permitting is shared between the central government and the municipalities; the procedure is still highly centralized, expensive and absolutely inflexible though. Emphasis is given on the "control" of development and on the production of more maps and plans, however the whole approach is expensive and creates more corruption. It is worth mentioning that in many cases the current parcel arrangement in the field does not much with the existing plans thus prohibiting building permitting even in areas where DUPs exist.

Planning regulations and land takings do not take into consideration the impact created on the private properties' value. Small investors claim that inspectors are vulnerable to bribing offered by the big investors. Municipalities are inefficient to provide the plans thus the investors usually undertake these costs. In many cases municipalities are slow in providing the utility infrastructure and connections to the utility networks, thus investors hire private companies in order to speed up these procedures despite the fact that they also pay the communal fees.

A "pro-growth" approach aiming to simply and "facilitate" development, taking into consideration a number of issues like the economic situation of the citizens, the existing private property rights, the market needs, the lack of reliable plans, lack of personnel and of funds, may be adopted.

Government still continues to be in favor of absolute state control in the development of land, police measures, on-site inspections (e.g., spatial protection inspection, urban planning inspection, inspection for construction of structures, ecological inspection), and it adopts measures in this respect. However in general field inspections are costly and in most cases lead to more corruption; small investors complained that investors are vulnerable to bribing usually offered by the big investors. Automated procedures and mechanisms should be adopted for environmental protection and development monitoring. Empowerment of local authorities and citizen participation can and should be significantly improved.

According to the interviews made in June 2011 for the purposes of this study, building permitting is complicated, requires several documents from several agencies and several controls and reviews and may last approximately one year in average. Montenegro still stands at 173 in the World Bank ranking of 183 economies on the ease of dealing with construction permits (for building a simple commercial warehouse). According to official data collected by the World Bank for the 2012 Doing Business report for Montenegro, dealing with construction permits there requires 17 procedures, takes 267 days and costs 1469.9% of income per capita.

Environmental, Social and Economic Impacts

The most significant social and environmental impact of informal settlements and buildings in Montenegro is related to the inadequate utility infrastructure such as: fresh water supply network; electricity/energy supply network; sewage, the discharge of waste waters in septic systems and the risk for polluting the underground and surface water; waste collection and management; and the inadequate natural disaster risk prevention and management, especially in terms of flooding, forest fires and the following soil/rock slides, and earthquakes. Around 10 % of the territory has a problem with seasonal surplus water; there is insufficient provision for drinking water in the coastal region during the tourist season. The uncontrolled use and pollution of water in Montenegro is harmful for its people and the natural environment. Pollution prevention measures must be applied to ensure that water remains clean and human health, animal and plant life are protected.

About 77.8 % of households with income over 275 €/month use electricity for heating (only 7.5 % in the North) while over 70.5 % of low-income households use wood. A lack of electricity provision is identified in informal settlements of only six municipalities.

Waste collection is not provided in informal settlements for eight municipalities; waste producers in such informal settlements dispose the generated waste at not suitable places. According to the National Waste Management Policy, adopted in 2004, the entire republic has been divided into 8 waste catchment areas; current challenges include the planning for the waste management locations, the resolving of land expropriation issues, and the issuing of permits for the construction of the necessary landfills. Podgorica operates since two years a landfill, while the country is finalizing the plans for the construction of four other landfills.

Poor occupants of sub-standard illegal slums are socially marginalized by having no access to ownership rights, to legality and credit, and they experience high health risks, due to poor quality of drinking water. Roma settlements belong to this category. According to a 2008 survey made by the Montenegrin national statistics bureau MONSTAT, the Roma National Council and NGO Coalition Rromski Krug, there are around 11,000 Roma residing in the country, including those displaced from Kosovo; local non-governmental organisations estimate that the real number is between 20,000 and 28,000. Improving the plight of Roma is one of the toughest challenges faced by the country; due to a lack of funds in the municipalities, international assistance and UN agencies support both the integration of IDP to the Montenegrin society and/or their voluntary return to Kosovo. However, there is a significant criticism by EU

agencies and experts on the latter, as the impact of frequent up routing Roma and especially their kids is great.

The general “non-payment” of taxes of all kinds by Montenegrin people resulted in insufficient funds in the local budget for general services and improvements in the informal settlements. This shows that either the taxes are not affordable by the majority of the citizens or that citizens do not trust the state and the local government. Innovative and increased citizen involvement, participation may replace the state in some tasks. Traditional tasks carried out by the local government may be transferred to the citizens.

Most illegal buildings are of comparatively good construction and have connections to some basic services. However, they are not registered in the cadastre and thus there is a significant loss of tax state revenue. Many occupants of illegal buildings are deprived of legal ownership rights and/or they have no access to credit or to the real estate market. Especially in the villages and rural areas people found themselves in the unpopular situation to be considered illegal just because the construction permitting customs/legislation has changed and the new law has a retroactive power. This has blocked the market but also WB investments in agriculture in the rural areas. There is a considerable amount of assets blocked in illegal constructions, as “sleeping capital”, which should be integrated into the real estate market. This situation hinders poverty reduction.

Current trends in dealing with informal settlements

Some major fundamental principles internationally adopted for addressing illegal constructions may be summarized as following:

- Any tool (legalization, resettlement, demolition, upgrading, integration into spatial and urban plans and land reallocation, etc) used to improve the existing situation in areas with illegal development should not create homeless people ;
- People should not be deprived of land ;
- Access to land and ownership rights should be made affordable, procedures must be simplified;
- “Dead capital” invested in illegal constructions should be activated for the benefit of the economy of the country. By Hernando de Soto’s calculations, the total value of the real estate held but not legally owned by the poor of the Third World and former communist nations is at least \$9.3 trillion. This amount is about 46 times as much as the World Bank loans of the past three decades, and more than 20 times the total direct foreign investment into all Third World and former communist countries in the period 1989-1999;
- Legalization should include as many illegal constructions as possible, not only those serving housing need, not only those whose owners can afford to pay; Legalization procedure should be clear, cheap and attractive to all;
- Legalization should be accompanied with environmental improvements and with measures to avoid illegal construction in the future such as affordable and flexible planning and building permitting to facilitate growth;

- Legalization should include motives both for those who are extra-legal and for those who have respected the law; it should be made clear that legalization is for the benefit of the national economy and thus for a general prosperity, poverty reduction and fair property taxation ;
- Any demolition of illegal construction should be applied exceptionally, only in extreme cases with proven environmental impact that cannot be recovered by other means, always at an early stage of the construction (before occupation), using transparent procedures, providing for judicial appeals;
- Automated monitoring methods, using modern photogrammetric techniques, should gradually be applied. Automation may eliminate human involvement in the inspection procedure and onsite inspections that usually encourage corruption may be minimized;
- Improving the legality in terms of land tenure and the infrastructure of Roma settlements is one of the top goals of today's European Council policies, the UN and the High Level Commission for the Legal Empowerment of the Poor (HLCLEP).
- International experience though shows that upgrading the Roma illegal settlements is the most difficult challenge. Several policies have been applied in various countries like housing loans, social housing, etc. Such policies must be accompanied by other strict measures like formal registration of people and their families at the municipality records, obligatory school education, etc.
- Political developments in Europe during recent decades have increased the housing problem and the difficulties of Roma in accessing land for housing; the Kosovo conflict has led to a large displacement of Roma to other Balkan countries Serbia, Bosnia, Herzegovina, Montenegro, FY Republic of Macedonia, even Italy, Greece and elsewhere; Some European states now spend considerable funds to enable the return of the Roma to their countries of origin;
- as Hammarberg points out, it would be much better if these funds were made available to the Roma in order to improve their standards of living in these countries, as it is difficult especially for the children to change languages, schools and homes.
- Seismic vulnerability controls of informal constructions require on-site inspections by specialized structural engineers; compilation of "therapy" studies for improvements where needed; supervision of the implementation of improvements and continuous control. Such controls require an application of appropriate professional ethics.
- In terms of seismic vulnerability controls on existing informal constructions it may be considered that buildings are usually classified into three categories according to their "main use":
 1. Residence,
 2. Professional use, and
 3. Professional use that requires special operation license.
- Thorough seismic vulnerability controls are mainly intended for completed informal structures of professional use that require a special operation license, public buildings, high-rise informal buildings of all uses (hotels, restaurants,

etc) and other institutional constructions that may accommodate large accumulations of people. Such controls should be commissioned to licensed engineers.

- Single-family houses and residential buildings of moderate height and good construction quality are considered to be “safe”, as long as the intended residential use of such buildings is not changed. This may be the case in all rural residences in Montenegro that pre existed the new law that requires construction permits. In Albania the state only legalizes the ownership rights (by providing improvements of minimum urban norms and standards) but undertakes no responsibility to assure the quality and safety of the residential constructions up to 3-4 floors.
- In Cyprus, legalization of constructions where the building and planning permits have been exceeded are optional and will be accomplished at a later stage, only after strengthening of property titles. The involved private structural engineers are then expected to undertake the responsibility for that process.

Lessons learnt from Albania include the following:

- Extra-legal informal developments should be legalised using an approach that involves self-declaration;
- An appropriate, flexible and simplified legal framework must be established to support informal development formalization in an **inclusive** manner to allow full transparency for the citizen and increase public trust; **make it affordable**;
- Designate areas for development where informal construction can be legalised and future construction can be permitted and unblock markets by relaxing some standards -for example the minimum site sizes- adopt minimum urban norms and standards;
- Give priority to land privatization and property registration, unblock registration, mortgage and transaction procedures, relax real property taxation;
- Establish a dedicated agency for regularization of informal settlements.

Lessons learnt from Greece include the following:

- Centralized, complicate and expensive planning procedures encourage further informal development; **strict environmental regulations and Constitutional restrictions put the brakes on economic growth**;
- There is a need for a clear government policy and collective will among all stakeholders for legalization of informal development; formalization for a certain/limited period creates public mistrust and blocks the market and the economy;
- Local and international real estate markets require among others security of tenure and clear regulations and policies;
- Long existing private rights on land (formal or informal) should be recognized;

- Expensive and unclear legalization procedures, plethora of legalization laws, detailed on-site controls and high penalties reduce the expected economic and social benefits of legalization.

Lessons learnt from FY Republic of Macedonia include:

- Adopt a legalization policy that will increase the public trust; make the legalization process inclusive, attractive and favorable to all. Adopt a symbolic and low legalization fee, make it affordable and brief (simple documentation); this will bring the best results for the economy within the shortest time;
- Minimize the general legalization costs by minimizing the required controls and the required on-site inspections; (in FYROM the responsible authorities should decide and either provide the urban consent or not within the next 6 months following the self-declaration submission);
- Any required document that may delay the procedure e.g., the geodetic survey of the informal construction, may be submitted at a later stage;
- Unblock the declaration and legalization procedure from all kind of construction and planning controls and improvements; Further improvements (relevant to environmental aspects, public health standards, fire prevention codes, and construction codes), if needed, may follow the improvement of the legal status of the construction.

Lessons learnt from Cyprus include the following:

- Updated property titles are a necessity in the globalized economy.
- The planning and building legality of the building should not be a prerequisite for the issuing of an updated ownership title; such irregularities may be recorded on the title though.
- The seller, or the buyer, or even the relevant property registration authority should have the right to activate the necessary procedures for the legalization of the development or for issuing of updated title.
- Legalization of planning and building illegalities may even be made optional, according to the owner's/purchaser's affordability or will; however, acquiring an ownership title should be obligatory.

Comments and Proposals on the legalization options considered by the Government of Montenegro

Government: Those illegal constructions built until the adoption of the new Criminal Code in 2008 may not be demolished, however, those built after that date should obligatory be demolished. In addition, constructions without a use/occupancy permit cannot be registered in the cadastre.

Comment: "International experience shows that adoption of such strict deadlines without making any serious system reforms (in property registration and taxation, planning and construction permitting, affordable housing policy, etc) simply create a new generation of informal settlements. This creates more corruption and public mistrust and makes it even more difficult to deal with new informalities in the future.

There is a need for major land reforms. While in the cadastral records there are registered only 39,922 illegal constructions, unofficial statistics claim that in total there are more than 130,000 illegal buildings in Montenegro. The impact of this measure on the economy and on sound decision-making is huge.”

Government has worked to elaborate the planning documentation and strengthen the **on-site inspection supervision system** by introducing inspectors for urbanism, inspectors for spatial protection, inspectors for construction, etc.

Comment: “In its effort to eliminate informal development the government of Montenegro is making the development process even more complicated, costly and bureaucratic. However, excessive on-site inspections are costly and in general are likely to increase corruption. This approach makes planning an even more expensive, complicated and bureaucratic procedure.”

The Ministry of Sustainable Development and Tourism understands that there is a variety of cases that may require **different policy approaches** (e.g., specific projects, different policies); an example is given for the area of Momisici C in Podgorica, an area of high potential market value occupied by refugees. The state decided not to legalize all existing buildings but to select and preserve only the best of those. A plan is made for the whole area; the state will then build multifamily buildings to resettle those occupants whose houses will not be rescued and some of the remaining land will be sold in the market. After resettlement occupants will undertake the costs to demolish the old houses. The state will allow purchase of ownership rights in the market value after a certain period of occupancy.

There is also a UNDP proposal to deal with legalization through pilot projects. It is roughly estimated by the Ministry that the revenue from communal fees may be approximately 950 M EUR (for ~100,000 objects of an average size of 100 m² each); this is expected to be collected within the next 20 years. The annual revenue from property taxes from the legalized objects may be 42.5 M EUR. Revenue is also expected to be derived from legalization penalties; this may be scalable depending on the type of illegality, location, quality of construction, etc and it is roughly calculated to be 142,500,000 EUR (95,000 objects x 1,500 EUR). The government considered the possibility that the policies of formalization may include the following:

- An agreement with the municipalities that the owners will pay the communal fees through bank loans within a period of 10-30 years, having in mind that for an average building of 100 m² the communal fees may be more than 10,000 EUR while the average salary of the head of a 4-member family may be 400 EUR per month. Governmental experts compare the monthly instalment payment of such communal fees with the monthly expense of a mobile phone bill,
- An agreement with the utility companies (state or private companies) to provide motives/discounts to the bills of the “legalized buildings” owners,
- An agreement with international donors for subsidizing the cost for the survey,
- An agreement with the union of Montenegrin engineers for an extension of payment period for the controls, certificates and plans needed for formalization,

- The formalization phase may consist of two stages: Stage A may include the identification of illegal buildings, the orthophoto production, the compilation of the detailed survey plans of each plot and building, and the contract with the municipalities to expand the payment period for the communal fees; Stage B may include the compilation of the detailed urban plans, the controls and issuing of the certificates for seismic vulnerability, the issuing of occupancy permits to use the buildings, and the final legalization.

UNDP puts an emphasis on improving the **energy efficiency** of the buildings, within the “ecological concept” of the country, prior to legalization, hoping that there will be an investment return after a certain period of time in the electricity bills that people will pay. According to UNDP it is estimated that such improvements may cost at average 4,000 EUR per house and that they may provide about 40-60% saving in the electricity bills. The saving from that investment may then be used by the owners of the illegal buildings to pay the communal fees which are very high.

According to the draft law for legalization, the prerequisites for legalization are:

- (a) The existence of a detailed urban plan and the compliance of the construction;
- (b) On-site inspection of the construction in terms of compliance with building and planning regulations;
- (c) On-site inspection for rating the seismic vulnerability of the construction; and
- (d) Certificate of ownership rights.

The necessary documents for acquiring a building and planning permit are:

- (a) Proof of ownership right of land and building (registration in the cadastre with a notice that the building was built without a permit)
- (b) Proof of arranging the payment of communal fee
- (c) Proof of payment of the administrative tax
- (d) Geodetic survey of the structure and the plot
- (e) Proof that the construction is in compliance with the building and planning regulations
- (f) Proof that the construction is safe in terms of seismic risk

Classification of constructions in three categories, *in terms of safety*:

- (a) Those that are safe, and can acquire the use permit;
- (b) Those that need improvements; a reconstruction plan will be developed and implemented. This should be finished within a maximum of 5 years. By completion of the improvements a use permit will be issued;
- (c) Those that should be demolished (it is estimated that about 5% of the constructions will be demolished because they do not comply with the plan and the regulations; owners will be resettled).

Classification of constructions *in terms of planning*:

In brief, government is considering the following methodology for solving the problem:

- Informal constructions *within the planned areas* are divided into 3 categories:
 - (a) those who can be legalized but their owners don't intend to;
 - (b) those that their owners have the intention to do so but so far they cannot; and
 - (c) those who are not qualified to be legalized.

Each category is addressed as follows:

- (a) Government proposes measures to enforce formalization, including: disconnection from utility networks and/or increase of property tax up to 5 times.
 - (b) Owners should pay to obtain a merged permit that includes both the building and the use/occupancy permit, as long as they provide a certificate of structural safety signed by a business organization licensed for construction.
 - (c) Such constructions may either be improved-if possible- or demolished.
- Informal constructions within the unplanned areas.

Such constructions cannot be legalized until the detailed plans will be prepared; such constructions will be legalised at a later stage. However, an on-site inspection is required to check the seismic vulnerability of the construction which will be considered by the planners for the compilation of the detailed plan. Such constructions will be taxed like those whose owners do not intend to legalize.

Classification of constructions *in terms of ownership*:

- Informal constructions built on personal private land.
- Informal constructions built on state or municipal land. In such cases two options are provided: (a) purchase of state or municipal land through a loan arrangement with foreign financial institutions or (b) long-term lease of land.

The collected fees will go to the state and/or local government according to their responsibility; 25% of that revenue will be used for demolition of the unwanted buildings.

Comment: "It is worth mentioning that empowerment of ownership rights and operation of property market is not within the first priorities of this law. Emphasis is placed on the compilation of the detailed city plans and on the on-site controls for compliance with building and planning regulations and for seismic vulnerability. Legalization may only take place after fulfilment of the above and payment of all costs, taxes and fees; moreover, legalization should follow technical improvements if needed. It is estimated that 5% of the existing informal constructions must be demolished and people must be resettled in buildings that will be built by the state. Citizens are expected to get bank loans for all the above expenses and the process of legalization is expected to go on for at least for 10 years.

In the "Strategy 2008" text it is mentioned: "Having in mind the scale of the project, the entire expert public would be involved in the project. All Montenegrin engineers

*in this field would be recruited in the following several years (**estimates indicate ten years at least**)". It is good to create job opportunities; however, emphasis should be placed on professional ethics, as the concept of legalization is not to keep engineers busy, neither to make the procedure long. Such reform projects should finish in short time.*

As Gavin Adlington, a WB land administration specialist, said recently "...in the past governments asked professionals: what needs to be done? How much it will cost? How long it will take? Today, many governments tell the professionals: this is what needs to be done; this is how much money you have; this is when it must be completed" (Adlington, 2011). From this point of view most of the detailed requirements for legalization may be minimized, made more affordable or postponed for a post-legalization stage.

*While the original intention of the Housing Department of the Ministry of Sustainable Development and Tourism seemed to have an inclusive approach, there is a big risk that through implementation of certain policies (that have influenced the new legislation) several fundamental principles will be overlooked. This is likely to happen because legalization is planned to fit with the practices, policies and legal framework of a **highly controlled economy**. Within a free market economy international experience shows that better results can be achieved if legalization is simple, quick, without too many documentation requirements, affordable and attractive to all.*

Taking into consideration that

- communal fees and the property taxes are unrealistically high for the average monthly income (only 20-30% of the citizens manage to pay the property taxes)*
- there is a significant percentage of poor and unemployed people in all regions, who periodically may move within the country in search of temporary jobs,*

it seems complicated and rather awkward to adopt different legalization approaches for the different locations or types of informal settlements, especially in a country as small as Montenegro. There is a risk that pilot legalization projects may delay the legalization progress and its expected benefits enormously.

Instead, a quick, inclusive, unified legalization approach may be preferable; legalization fees and overall costs may be scalable according to the owner's real property portfolio. Annual property taxes that will be applied after recognizing and registering the ownership rights may be scaled according to the market value of the real estate (location is always an important factor which together with other parameters like construction quality, age, etc, determine the market value). Market mechanisms will soon unlock the potential value of each location, while property owners may then consider several options to satisfy their housing needs. The state will benefit from the operation of the property market. For certain areas of particular natural beauty a specific approach may be adopted-if necessary; however such areas may be pre-selected and delineated on the orthophotos and in any case such areas should be limited in number and size.

As for the governmental proposal that citizen may take a bank loan to pay the communal fees and penalties, it should be noticed that most likely only the upper low

and middle income state employees and those working at the most stable private companies will qualify for such bank loans. Besides it is not common practice that citizen are forced to get bank loans in order to pay taxes or communal fees. Bank loans might be proposed under different circumstances e.g., if the general economic status of the people was upper low-middle (but with stable employment, etc) and/or high income and they were all qualified for lending. A bank loan is a long term commitment while the use of a mobile phone may be terminated any time; such comparisons are not reasonable. Moreover, it is not likely that the state will subsidize the utility bills; this may happen in the case that utility companies are state enterprises but this also is not a common practice in the free market economies. Government should not get involved in agreements with the private sector and Montenegrin engineers about fees for service, too; fees should not be fixed; the market is expected to determine fees.

Before legalization, it would be much preferable to separate ownership rights from any obligations or any kind of permits like construction and occupancy permit, operational permits in case of commercial buildings and planning permit / requirements, and to have:

- *as phase A:*
 - *orthophoto production;*
 - *identification of those areas of special interest where special policy approaches will be applied, and of illegal zones within which a unified, simple and quick legalization will take place and where further construction may be permitted (with minimum norms and standards);*
 - *brief on-site inspections for compliance with the minimum norms and standards and simple visual inspections for the stability of the constructions in case of single residences up to 2-3 floors; parallel optional detailed seismic vulnerability and other controls may take place;*
 - *acceptance of the existing built-up situation as the detailed spatial plan; few constructions that do not fit will be demolished;*
 - *affordable privatization of land (e.g., for first residence, up to a minimum plot size) accompanied with a simple survey of the property including the footprint of the building and its basic characteristics (area size, floor number, construction type, photo) , and title issuing. Purchase of land at market value in other cases; alternative possibility for long term leasing in case people cannot afford the prices;*
 - *Registration of property rights to the cadastre and immediate legalization (permit for integration of these building into the property market);*
 - *obligatory controls for seismic vulnerability and other requirements in case of commercial multi-family blocks of apartments and buildings of any type of commercial or public use before issuing new property rights and occupancy permit to each apartment and before issuing operational permits to public or commercial buildings;*
- *as Phase B:*
 - *detailed planning, neighbourhood improvements, etc*

- *construction controls and improvements, infrastructure improvements and other certificate issuing according to the market needs (environmental, energy efficiency, etc).*

International experience shows that there is an emergency for provision of clear legal property titles and access to market prior to any planning and construction improvements.

Specifically on this UNDP “energy efficiency” proposal, it may be said that it is an excellent idea but such a project may be offered to all constructions optionally normally following the property title issuing and legalization. Moreover, it is not clear how and why the banks would provide credit for energy improvements in illegal houses prior to legalization. Introducing “energy improvements” is a measure with dual benefit: both for the environment and for the economy as it creates job positions and helps in saving energy. The only concerns are first on the proposed obligatory character of this measure that forces all citizens to get a loan for that purpose (while they may have other more vital needs) and second on the fact that not everyone is qualified for a loan. Energy improvements in constructions should not be obligatory and connected to legalization and issuing of property titles, unless the expenses for such improvements will be deducted from the general legalization costs.

In terms of detailed seismic safety controls, buildings may be classified into three categories according to their “main use”:

- 1. Residence,*
- 2. Professional use, and*
- 3. Professional use that requires special operation license.*

Legalized property titles for individual family houses may mention that no thorough technical safety control is accomplished; use permits may be offered for individual residences up to 2-3 floors after a brief visual inspection. Thorough technical safety controls may be accomplished according to the buyer’s requirement prior to a future transaction. Legalization and issuing of property titles may be separated from operational licenses in case of building of commercial use; safety controls are needed both for commercial multi-family blocks of apartments built informally without a permit and for public and/or commercial buildings. In case such buildings have been built without a permit but under the supervision of an engineer, then the engineer involved may undertake to sign for the stability of the construction.

In terms of proof for payment of all taxes and fees, the same policy used for payment of transfer property taxes may be also applied here. If people cannot afford to pay such expenses, these expenses may be registered on the property register as an encumbrance on the real estate. It is also important that government should take measures to increase stability in land policies and taxation in order to increase public trust. Then people may take benefit of the available funding mechanisms, obtain loans and try to improve their livelihoods (improve housing, education, business, health). Only then will people be able to cope with property taxes and communal fees; normally people pay taxes on their earnings when they manage to satisfy first their basic needs.

Planning and construction informalities may be treated optionally according to citizens' financial ability. Planning norms and standards may be readjusted to fit with the financial ability of the people so that communal fees will be made affordable. Attention should be paid in the law so that the collected revenue will be reinvested in the municipalities. Some tasks that traditionally are in the responsibility of the municipalities may be transferred to the citizens in order to increase their interest and trust and reduce operational costs of the municipalities. Measures like disconnection from utility networks are not acceptable for several reasons, among others such measures will lower the living conditions of the people and damage their health, and their children's health and education, etc. Unrealistic increase of taxes will not help if affordability problems exist. There is no reason why people in the unplanned areas should be taxed as if they don't intend to legalize. On the contrary buildings in such areas should be legalized quickly so that people will manage to improve their living and agricultural businesses by having access to the WB loans. Besides, according to the past practice these constructions were not considered illegal, as no construction or planning permit was needed.

For those informal structures located on private land an arrangement should be made with the owner for a purchase of land; for those on state-owned land a parcel of land of reasonable size could be conveyed to the occupant of the structure, where practical, at an affordable price in case of first residence. If not considered practical to convert to private ownership a parcel of state-owned land another alternative would be to allow a long term lease of the property to the owner/occupant of the structure, otherwise the structure must be demolished. If the occupant already owns another residence, then a purchase of land should take place at its market value."

1. INTRODUCTION

Rapid economic and political change in the European region during the last twenty years has resulted in rapid population increase in many urban centres, mainly due to immigration of rural poor searching for job opportunities and better living conditions, or of internally displaced people. Increasing unplanned or informal suburban development has become an issue of major importance particularly in the transition countries.

In most transition countries there was a tendency to develop tools for securing land tenure without close coordination with tools for affordable housing, land use zoning and planning. Although in most countries in transition land restitution/privatization and first registration projects have been in operation since the beginning of the 1990s; informal development and lack of efficient administration already threatens the newly established legal rights and planning regulations over land. There is no effective institutional mechanism in place for linking planning and land use restrictions with ownership rights and land values, the operation of land markets and economic development.

Informal development is a social phenomenon where people settle on land that may be owned by others or the state and build dwellings – usually sub-standard and temporary in nature. These settlements have limited or no infrastructure. Informal development may even appear on legally owned land while its illegality is related to zoning, planning, or building regulations.

Illegal buildings are those constructions built on legally-owned or illegally-occupied land, without a construction permit, or in violation of a construction permit or against the verified basic legal project. Illegal buildings are usually out of the economic circle, not registered, taxed, transferred or mortgaged. In many cases illegal construction in the European transition countries is of a good, permanent type, and can be characterized as “affordable housing” rather than as “slums”, although they may not meet all construction stability, safety and environmental standards. These constructions represent the dead capital of the country’s economy. The problem is well known in the region.

Research on this field was initiated by FIG Commission 3 (2007-2010), UNECE and UNHABITAT. Following the joint FIG Commission 3 and UNECE WPLA and CHLM 2007 Workshop, UNECE WPLA and CHLM produced a joint publication “Self-made Cities – In search of sustainable solutions for informal settlements in the United Nations Economic Commission for Europe region”, in 2009. Among others, this study described the factors and defined the main characteristics of different types of informal settlements, reviewed the major constraints in the existing housing, land management and planning systems, provided an overview of the different policy approaches and actions that address the issue of informal settlements which have been implemented in various places, and provided some general guidance for decision makers. In 2009 the World Bank and the government of FYR Macedonia compiled an in-depth study on illegally built objects. In 2010, a detailed FIG/UNHABITAT study on “Informal Urban Development in Europe-Experiences from Albania and Greece” was published (Potsiou, 2010). That research attempted an in-depth investigation and evaluation, for Albania and Greece separately, on critical interrelated aspects such as:

the classification of current informal development and its causes; its impacts; the governmental and municipal policies; the land administration and the planning system; the strengths and weakness of the systems and made a critique of the followed procedures.

Recognizing the importance of a secure property rights system and regulated and formalized ownership rights for improving the investment climate in Montenegro as well as for the overall economic growth of the country, Statens Kartverk has agreed to support this study on informal buildings and informal development in Montenegro. This study builds upon the above mentioned research and adds more detailed information and lessons from latest experience in Montenegro. It is aimed that this study will support the government's capacity to formulate and develop policies to ensure the integration of illegal buildings into the economic circle and the full functioning of land and real estate markets in Montenegro.

Causes identified by the government for such a number of illegal structures are numerous, starting from demographic processes, economic status of the State and population, “non-coverage” by plans, inadequate supervision (national and local), administrative capacities, lack of responsibility of illegal constructors regarding national assets etc.

The various types of illegal buildings, according to local experts, are the following:

1. refugees' settlements squatting on state owned or private land, with limited or no infrastructure;
2. illegal single family houses at the urban fringe and rural areas;
3. illegal building extensions in excess of building permits;
4. constructions of good quality built in expensive areas without, or in excess of, building permits, on private or state owned land, both for housing and/or income increase;
5. illegal upgrading of old constructions without permits;
6. vacation houses.

While the Real Estate Administration keeps a record of illegal constructions and the Ministry of Sustainable Development and Tourism has asked the municipalities for updated data, a comprehensive list where all the illegally built objects in the whole territory of the country is still missing.

The UNDP and the municipalities have provided available relevant information for this study, including the following documents:

1. The Strategy Converting Informal Settlements into Formal and Regularisation of Building Structures with Special Emphasis on Seismic Challenges, 2010;
2. Law on Spatial Development and Construction of Structures, 2008;
3. Draft Law on Regularization of illegally built structures, 2011;
4. Law on Spatial Planning, 2011;
5. Draft Law on Amendments to the Law on Spatial Development and Construction of Structures;
6. Montenegro informal Settlement report 2011;
7. Law on Citizenship;
8. Strategy for the Improvement of the Position of RAE Population in Montenegro, 2008-2012;

9. Law on Asylum;
10. Law on Foreigners;
11. A List of Building Erected without a building permit or used without a use permit, in Zabljak;
12. Law on State Property of Montenegro;
13. Report on the Status of Spatial Development for the year 2009;
14. Law on State Surveying and Cadastre of Immoveable Property, 2007.

2. OBJECTIVES OF THE STUDY

The main objective of this study is to provide the necessary information in assistance to the Government in resolution of the illegally built objects issue. In particular, the study identifies the:

1. problem and its causes, impacts, size, and type of informal development in Montenegro.
2. involved authorities, policy framework and strategies (housing policies, access to land and ownership) and the existing tools (property registration, planning and permitting systems, legislation for legalization / upgrading) used for the legal integration and the environmental upgrading of informal urban development, and practices (citizen participation, penalties, fees, demolition, monitoring of environmentally sensitive areas) to improve transparency and prevent future informal development, eliminate the impacts and improve the livelihood of urban poor and low income people living in informal houses.
3. current international experience in regards to illegally built objects in some countries in the region and current tools and practices applied.
4. proposals for possible solutions and recommendations on the measures that need to be taken in order to eliminate illegal construction and facilitate growth through the operation of efficient, transparent, and formal land market and safeguard the environment.

This activity should develop public and transparent policy and directions on improvement of the legislation and the current situation in relation to the process of identification and the process of legalization/treatment of the illegal buildings in Montenegro, and should provide other countries with useful knowledge and better understanding of the complex informal development issues.

3. ILLEGAL DEVELOPMENT IN MONTENEGRO

3.1 Country Background and State-of-the-Art of Illegal Development

This chapter includes brief information about the economic, social and cultural aspects related to housing and the occupants' main sources of income. It gives general information about the phenomenon of illegal urban development in the country, its impact and statistics related to the extent of the problem of illegal construction. The current land administration and spatial planning system and the building permitting procedures are investigated, and the state agencies involved in land development are identified.

3.1.1. General Information

On 3 June 2006, the Montenegrin Parliament declared the independence of Montenegro.

Montenegro is a small country of about 13,812 km² at the Adriatic Sea; the Montenegrin coast is 295 km long. Located on the Balkan Peninsula, Montenegro (*Crna Gora*) is bounded by Croatia, Bosnia and Herzegovina, Serbia, Kosovo, and Albania (figure 1).



Figure 1. Map of Montenegro (2007)
(source: http://en.wikipedia.org/wiki/File:Montenegro_Map.png)

Montenegro has an interesting geo-morphology; it ranges from high peaks along its borders with Serbia and Albania, to a narrow coastal plain that is only one to four miles (6 km) wide. The plain stops abruptly in the north, where Mount Lovcen and

Mount Orjen plunge into the inlet of the Bay of Kotor. The mountains of Montenegro include some of the most rugged terrain in Europe, averaging more than 2,000 metres in elevation. The Montenegrin mountain ranges were among the most ice-eroded parts of the Balkan Peninsula during the last glacial period. Montenegro is a country of special natural beauty that is recognized by its Constitution as an “ecological” country. Natural and cultural beauty of Montenegro attracts tourism and international real estate market interest.

However, Montenegrin coastal zone is a high risk seismic area. In the territory of Montenegro, destructive earthquakes are most often related to large movements of rocks (land-slides, erosion of rocks), floods, avalanches, regional fires and other natural hazards. Figure 2 shows the epicentres of the damaging and disastrous earthquakes in Montenegro and the surrounding for the past 5 centuries and the expected maximum intensity of earthquakes for the recurrent 200 year period and the realization probability of 70 % for the area of Montenegro and its surrounding.

The most recent disastrous earthquake (measured 7.0 on the Richter scale) happened on the 15th of April 1979 at 06:19, fifteen kilometers from the Montenegrin coast between Bar and Ulcinj; its tremor lasted for ten seconds and was mostly felt along the Montenegrin and Albanian coastline. Budva's Old Town, one of Montenegro's Cultural Heritage Sites, was heavily devastated.

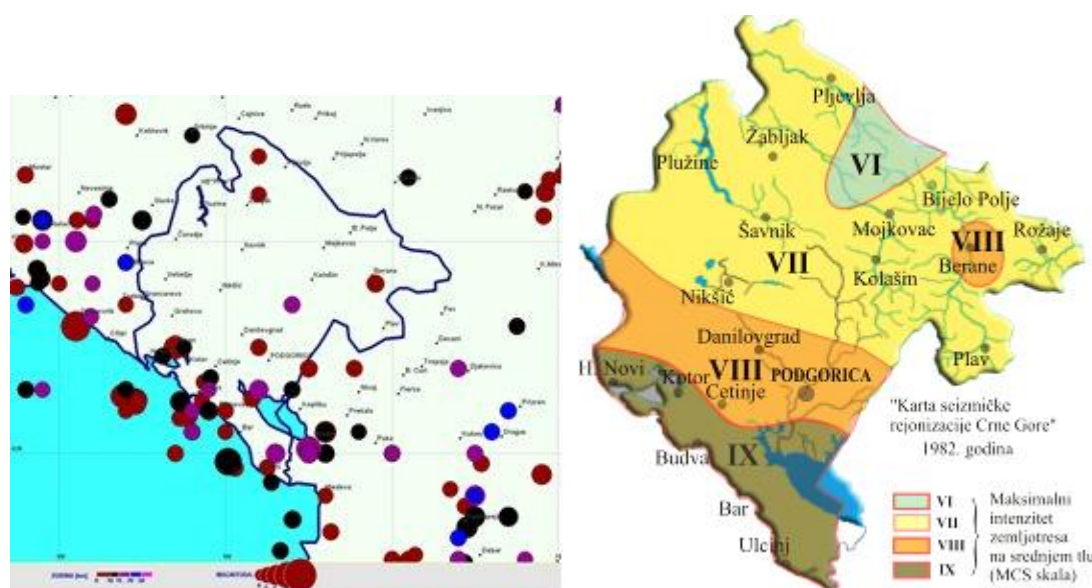


Figure 2. Map of earthquake epicentres (left) and expected maximum density (right).
(source: Ministry of Interior and Public Administration)

Montenegro is divided into twenty-one municipalities, two urban municipality subdivisions of Podgorica, and 1256 settlements (40 urban and 1216 other types of settlements) (figures 3 and 4).

The results of the 2011 census show that Montenegro has 661,807 citizens. More than 50% of the population live on about 22% of the territory, mainly in the coastal municipalities and in Podgorica. The various ethnic groups of Montenegro are: Montenegrins (*Crnogorci*) 43%, Serbs (*Srbi*) 32%, Bosniaks (*Bošnjaci*) 8%,

Albanians (*Albanci* - *Shqiptarët*) 5%, and other 12% which include Muslims (*Muslimani*), Croats (*Hrvati*), and Roma. Figure 5 shows the ethnic structure of Montenegro by municipalities. Montenegrin language is Montenegro's prime official language. Next to it, Serbian, Bosnian, Albanian and Croatian are also recognized.



Figure 3. Municipalities, largest cities and towns of Montenegro.
(source: http://en.wikipedia.org/wiki/File:Montenegro_municipalities.png)

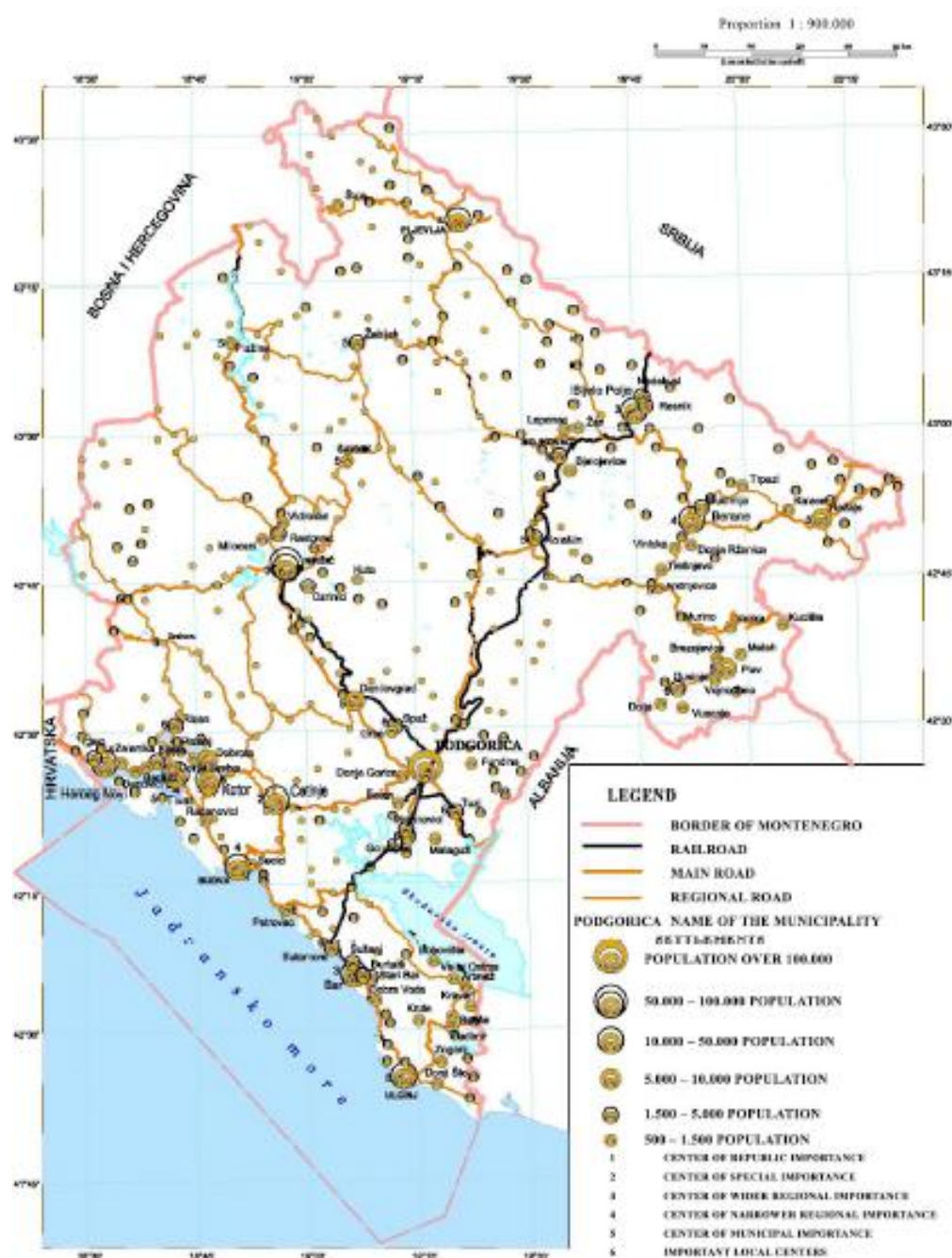


Figure 4. Settlements of Montenegro (classification according the population).
(source: Spatial Plan of Montenegro)

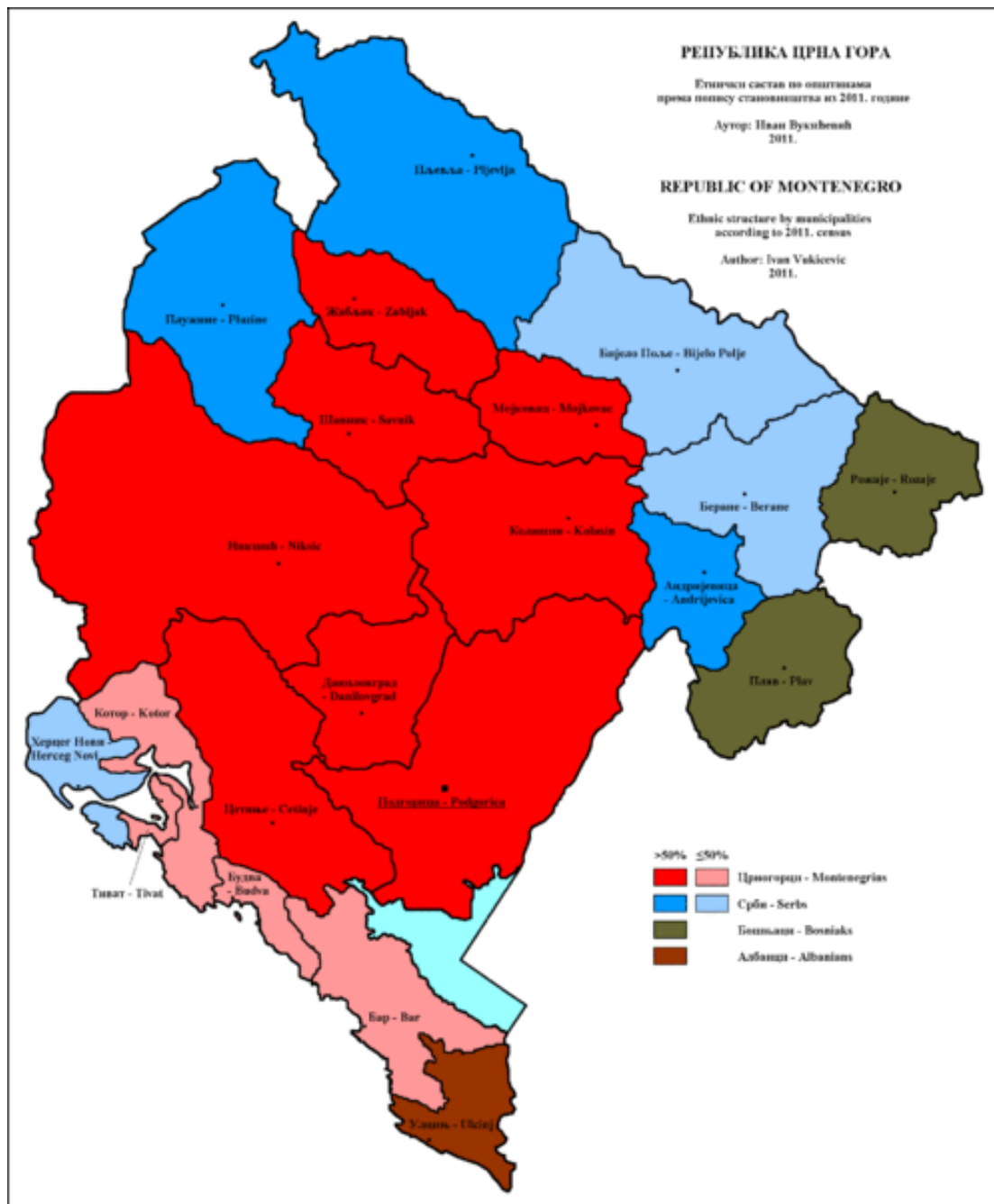


Figure 5. Ethnic structure of Montenegro by municipalities 2011 (red/pink: Montenegrins, blue/light blue: Serbs, green: Bosniaks, brown: Albanians).

The disintegration of the Yugoslav market and the imposition of UN sanctions in May 1992 were the causes of the greatest economic and financial crisis in Montenegro since World War II. During 1993, two thirds of the Montenegrin population lived below the poverty line. Following independence Montenegro's economy has continued the reforms. Currently, the economy of Montenegro is service-based and is in late transition to a market economy. Service sector makes up for 72% of GDP, industry (aluminium and steel production and agricultural processing) for 17.6%, and agriculture for 10% (2007 data). Tourism is an important contributor to Montenegrin economy and government expenditures on infrastructure improvements are largely targeted towards that goal.

Efforts have been made to attract foreign investors into tourism greenfield investments, as well as in large infrastructure projects, both needed to facilitate the tourism development. Due to foreign direct investment, the Montenegrin economy has been growing at a fast pace in recent years. Currently Montenegro hosts some 5,000 investors from 86 countries. According to the Central Bank of Montenegro, the real GDP growth was 6.9% for the year 2008, -5.7% for 2009, and 1.1% for 2010, while inflation was 8.5%, 3.4% and 0.5% respectively.

The number of persons aged between 16 and 74 years who use a computer is 53.2%, while the percentage of those who have never used a computer is 46.8% (MONSTAT, survey 2011). In regards to internet use, 46.5% of persons reported that they have used the internet, whereas there are 76.6% who used the internet on a daily basis or almost every day, and 17.5% of persons use the internet at least once a week.

Montenegro experienced a real estate boom in 2006 and 2007, with wealthy Russians, Britons and others buying property on the Montenegrin coast. Montenegro received, as of 2008, more foreign investment per capita than any other nation in Europe.

The unemployment rate was 10.7% in 2008. However, there are significant differences in the extent of poverty in the region between the northern and other parts of the country. Poverty rate in the northern region is almost double than the poverty rate in the central region and four times higher than the poverty rate in southern region. Poverty rate in the northern region was 10.3% in 2010. In that region there is 28.9% of the total population of Montenegro, but there is also 45.2% of all the poor. Poverty rate in the central region is 5.9%, and in the southern 2.6%. Also, rural population faces higher poverty risk compared to the urban population. In cases of households whose heads are employed, wages, whether from public or private sector, provide in most cases enough resources so that their members avoid absolute poverty (MONSTAT, survey 2011).

Findings

- *Montenegro is a country of special natural beauty that is recognized by its Constitution as an “ecological” country. Natural and cultural beauty of Montenegro attracts tourism and high international real estate market interest.*
- *In the territory of Montenegro, destructive earthquakes are often related to large movements of rocks (land-slides, erosion of rocks), floods, avalanches, regional fires and other natural hazards.*
- *The various ethnic groups of Montenegro are: Montenegrins (Crnogorci) 43%, Serbs (Srbi) 32%, Bosniaks (Bošnjaci) 8%, Albanians (Albanci - Shqiptarët) 5%, and other 12% which include Muslims (Muslimani), Croats (Hrvati), and Roma; according to UN reports, Roma are the most marginalized ethnic minority in Montenegro. Improving the plight of Roma is one of the most difficult challenges faced by the country.*
- *During 1993, two thirds of the Montenegrin population lived below the poverty line. Currently, the economy of Montenegro is service-based and is in late transition to a market economy. Tourism is an important contributor to*

Montenegrin economy and government expenditures on infrastructure improvements are largely targeted towards that goal.

- *Montenegro experienced a real estate boom in 2006 and 2007 with wealthy Russians, Britons and others buying property on Montenegrin coast. Montenegro received, as of 2008, more foreign investment per capita than any other nation in Europe. However, there are significant differences in the extent of poverty in the region between the northern and other parts of the country.*

3.1.2. Illegal Urban Development – History, Causes, Statistics, Types

Literature and internet research compiled for the purposes of this study have identified that informal development long existed in Montenegro. The “first generation” of informal development in the area is dated since the era of socialism. In the former Yugoslavia land was under state control. Despite the ambitious housing projects and social housing policy (all employees had to pay 1~5% of their income to the state for social housing purposes) there has always been a lack of money for housing purposes. This need was increased due to the natural disasters that happened in the region.

According to the 1984 UNESCO report on the 1979 earthquake a total of 1,487 objects were damaged (Figure 6), nearly half of which consisted of households and another forty percent consisting of churches and other sacred properties. Over 1,000 cultural monuments suffered damages, as well as thousands of works of art and valuable collections.



Figure 6. Damages caused by the earthquake on the 15th of April 1979: a detail from “Slavija” hotel – Budva (source: Ministry of Interior and Public Administration)

Practically the whole coastal zone of Montenegro was affected; 101 people died in Montenegro and 35 in Albania and more than 100,000 people were left homeless. The total earthquake damage was estimated to be ~US\$70 billion. UNESCO has offered significant assistance for restorations and rebuilding. To meet the total costs of the disaster, the government of Yugoslavia had set up a statutory fund whereby each worker across the country contributed 1%-5% of his monthly salary towards the restoration effort in a ten year period, from 1979 to 1989. By 1984, Montenegro was still under restoration, the entire Montenegrin coast, especially Budva and Kotor, and Cetinje receiving the heaviest amounts of restoration assistance (Figure 7).



Figure 7. Damaged houses in Budva (left); rebuilding of Kotor in 1986 (right)
(source: <http://members.virtualtourist.com/m/p/m/bf325/>)

However, a big portion of governmental and international interest was allocated for restoration of the cultural heritage. Despite the fact that all citizens were obliged to contribute to the fund many never had assistance for new housing; prices of new apartments were high, thus people were diverted to “self-made” housing that provided an alternative to inadequate affordable/ social housing.

Since mid 90s huge changes have had an impact on the urban development of Montenegro. Industrial urban areas decay while migration and rapid urbanization happens in the coastal zone, the suburban and rural areas in the greater area around the capital and in other tourist attractive venues, e.g. areas of natural beauty.

According to the results of the 2003 census, the population of the Republic of Montenegro (617,740) relied on a total housing stock of 253,135 dwellings – an average of 410 units per 1,000 people. Already in 2004, several challenges have been identified for the housing sector of Montenegro, including: uneven housing stock distribution resulting in severe shortages in some areas; deterioration of the housing stock, particularly the multi-unit stock, and the current inadequate system of maintenance of this stock; lack of affordable housing and lack of access to financing; need for adequate housing for vulnerable population groups, in particular refugees; illegal constructions and informal settlements; inadequate infrastructure and deficiencies in land management and spatial planning. The complicated planning and building permitting regulations and the difficulty (due to the several administrative changes in the region) in accessing all relevant/still valid legislation is a continuing challenge.

Single-family houses are predominant in Montenegro; apartment buildings are generally considered to be problematic (figure 8) in terms of management and maintenance (UN ECE, 2006). According to UN ECE country profile report of 2006, “...over 6000 households, many of which are Roma, live in substandard dwellings (slums). Vulnerable groups, represented by refugees and poor local households, consume less than 14m² per person, while the national average consumption is about 26 m² per person. Water supply, capacity and condition of communal networks are of general concern, especially in coastal areas and the northern part of Montenegro. The situation is more serious in the spontaneously expanding city of Podgorica, where illegal construction creates planning, legal, financial and physical constraints for adequate network connections.” The development of the *Housing Action Plan* in

2005 demonstrates a commitment to an integrated approach to solving housing problems.



Figure 8. Apartment buildings in Podgorica: new constructions (top left); deteriorated multi-unit stock (right and bottom left) (photos: author)

After independence a combination of major causes, such as poverty, internal and external migration as an impact of wars and sanctions on the state economy, lack of clear property rights and credit system, and the out-dated centrally driven and bureaucratic planning (with no public participation), created a boost of illegal settlements in Montenegro. Displaced people and refugees have moved in (about 30,000 refugees moved to Montenegro from Bosnia and Croatia in the period 1993-94; and more refugees came from Kosovo). The “self-made” housing solution, built on state land, acted as the only alternative to inadequate state social and/or affordable housing.

In the following years, the existing poor infrastructure and poor administration could not cope with the on-going transition into the market economy and could not satisfy the market pressure. Most of the new housing is illegally constructed. Informal settlements in Montenegro are a dominant feature of urban development; they vary in terms of standard (from slums to luxurious residences), location (from suburbs to city cores and protected areas) and size (from several small units to over 70 ha settlements). The pressure of illegal construction is greatest in Podgorica and the coastal areas. Podgorica, for example, already since 2006, had four large informal settlements, covering a total area of 211ha.

In 2010, Podgorica municipality contained 10.4% of Montenegro's territory and 29.9% of its population. Figure 9 shows the demographic trends in the northern, central and southern part of Montenegro since 1950 and the expectations up to 2050.

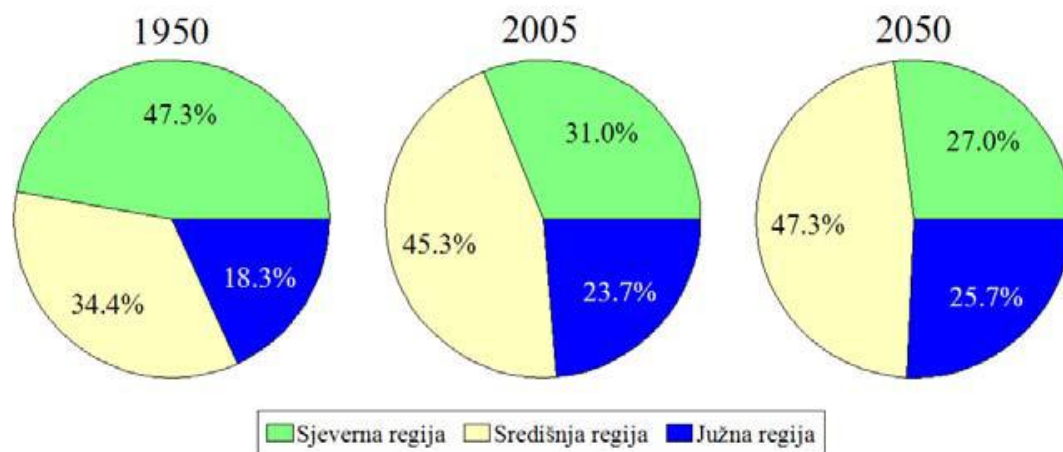


Figure 9. Demographic trends in Montenegro since the mid-20th century and prospects in 2050 green: north, yellow: centre, blue: south (source: MONSTAT)

Migration towards the southern part of the country is a result of the war in the neighbouring countries and the collapse of the state enterprises.

Causes and type of informal development

The lack of planned areas in combination with the rapid economic growth of certain regions, and the following increased international market demand for real estate lead to even more rapid informal development. Many of today's illegal constructions in the economically developed regions (e.g., city of Podgorica, coastal zone, other tourist areas) are violations of the building permits or constructions without permits caused by a *combination of reasons* like:

- *poverty, unemployment, inadequate housing; no social/affordable housing; no clear property rights; lack of access to affordable land; no credit system,*
- *migration and immigration,*
- *poor infrastructure, out-dated or not existing planning documents,*
- *bureaucratic, expensive and time-consuming planning and construction permitting,*
- *lack of coordination between central and local government,*
- *unclear responsibilities among responsible agencies,*
- *market pressure,*
- *property speculation and/or desire for a better living,*
- *corruption in land management, and*
- *general professional malpractice of the constructors; weak professional ethics.*

For the purposes of this study, on site visits and interviews with experts involved in the state and in the private sectors were conducted in the greater area of Podgorica, Bar, Bjelo Polje, and Zabljak.

Illegal development is located in all *types* of land (private or state land) in all of the above mentioned cities, ranging from dilapidated and risky areas, to unplanned peri-urban areas, inner city, protected natural and cultural heritage zones, national parks,

etc. Construction *quality* ranges from poor, frequently without basic utility facilities or with illegal connections to utility networks, to luxurious quality with adequate utility infrastructure either without or in excess of the building permit in terms of size and use regulations. It can be *one or several story* single house or multi-story commercial buildings (4 or more stories) (Figure 10).



Figure 10. Dense informal settlement, Sutomore, in the unplanned coastal areas of Bar due to rapidly increased market pressure (photos: author)

Illegal buildings are both residential and/or commercial (*frequently serving dual use*); those buildings that are not used to cover housing needs are built for income (either to be sold, or to be rented). In both cases, though, the majority are built in order to cover the people's living needs. Occupants and/or owners of illegal buildings include local residents and refugees. Private interviews claim that occupants are also foreigners (Germans, Britons and Russians) as Montenegro is an international destination

attractive for vacation and/or speculation; the existence of illegal buildings owned by foreigners is claimed in Bar (in Montenegro's coastal tourist zone) but also in Zabljak (in Montenegro's mountainous tourist zone). This may be possible as it is only since 2009 that foreigners were allowed to legally acquire property in Montenegro, while the peak of real estate boom happened in 2006 and 2007.

Available Statistics

According to the official data from the cadastre, on the territory of Montenegro there are 39,922 illegally built structures, of which the largest number is in the Capital city of Podgorica, 16,430 structures (Figure 11). According to the interviews with experts from the Ministry of Sustainable Development and Tourism about 1,000 of those constructions are without any building permit while the rest are in excess of the building permits. However, only those buildings whose the owners had the Montenegrin citizenship and built on land for which they had a use permit could be registered in the cadastre; in addition, recently only those buildings for which a use/occupancy permit has been officially issued can be registered in the real estate cadastre. Thus, a considerable number of illegal buildings without a building and use permit are not registered in the cadastre. The above statistics probably understate the condition.

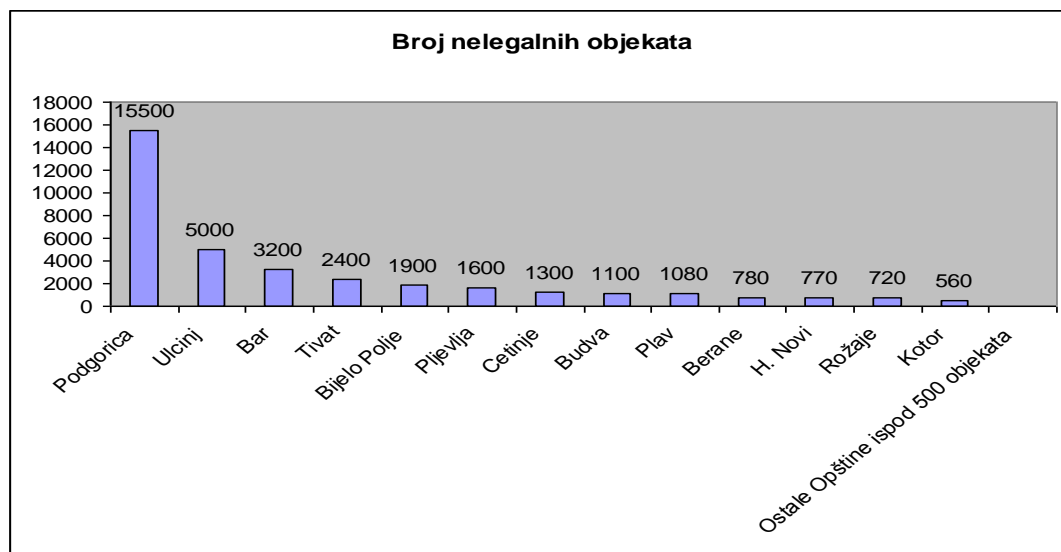


Figure 11. Number of illegal structures (source: MSPE, 2010)

According to unofficial data the number of informal structures is 130,000 (source: UNDP) and they are mainly concentrated in small and medium settlements all over the territory with a peak in the vicinity of Podgorica, as well as on the coast. There are rough estimations that more than 80% of the houses and apartments fall under the term “illegal”, either constructed completely without a building permit on state land and/or beyond the specifications of the permit.

Findings

- *The “first generation” of informal development in the area is dated since the era of socialism. In the former Yugoslavia land was under state control. Despite ambitious housing projects there has always been a lack of state funds for housing purposes. This need was increased due to the natural disasters in the region.*
- *Single-family houses are predominant in Montenegro; apartment buildings are generally considered to be problematic in terms of management and maintenance; over 6000 households, many of which are Roma, live in substandard dwellings (slums). (UN ECE, 2006).*
- *After independence a combination of major reasons, such as poverty, inadequacy of the social housing, lack of access to affordable land and property rights, internal and external migration as an impact of wars and sanctions on the state economy, and the out-dated centrally driven and bureaucratic planning (with no public participation), created a boost of illegal settlements in Montenegro. Displaced people and refugees have moved in. The “self-made” housing solution, built on state land, acted as the only alternative to inadequate state social and/or affordable housing. Causes of informal development also include lack of affordable housing, inefficient administration, expensive and complicated development procedures, increased market pressure, weak professional ethics and corruption.*
- *Most of the new housing is illegally constructed. Informal settlements in Montenegro are a dominant feature of urban development; are located in all types of land (private or state land). They vary in terms of standard (from slums to luxurious residences), location (from suburbs to city cores and protected areas), use (from residential to mixed and/or commercial) and size (from several small units to over 70 ha settlements and from small guesthouses to large hotels).*
- *According to unofficial data the number of informal structures is 130,000 (source: UNDP) and they are mainly concentrated in small and medium settlements all over the territory. More than 80% of the houses and apartments fall under the term “illegal”, either constructed completely without a building permit on state land and/or beyond the specifications of the permit.*

Examples of informal settlements in Podgorica, Bijelo Polje, and Zabljak

In suburban areas of Podgorica there are more than 20,000 illegal constructions (Mueller et al, 2008), most of them built on state land. Figure 12 shows the informal settlement of Momisici C in Malo Brdo hill close to the centre of Podgorica. There are five illegal zones in the greater area of Podgorica shown in Figure 13.

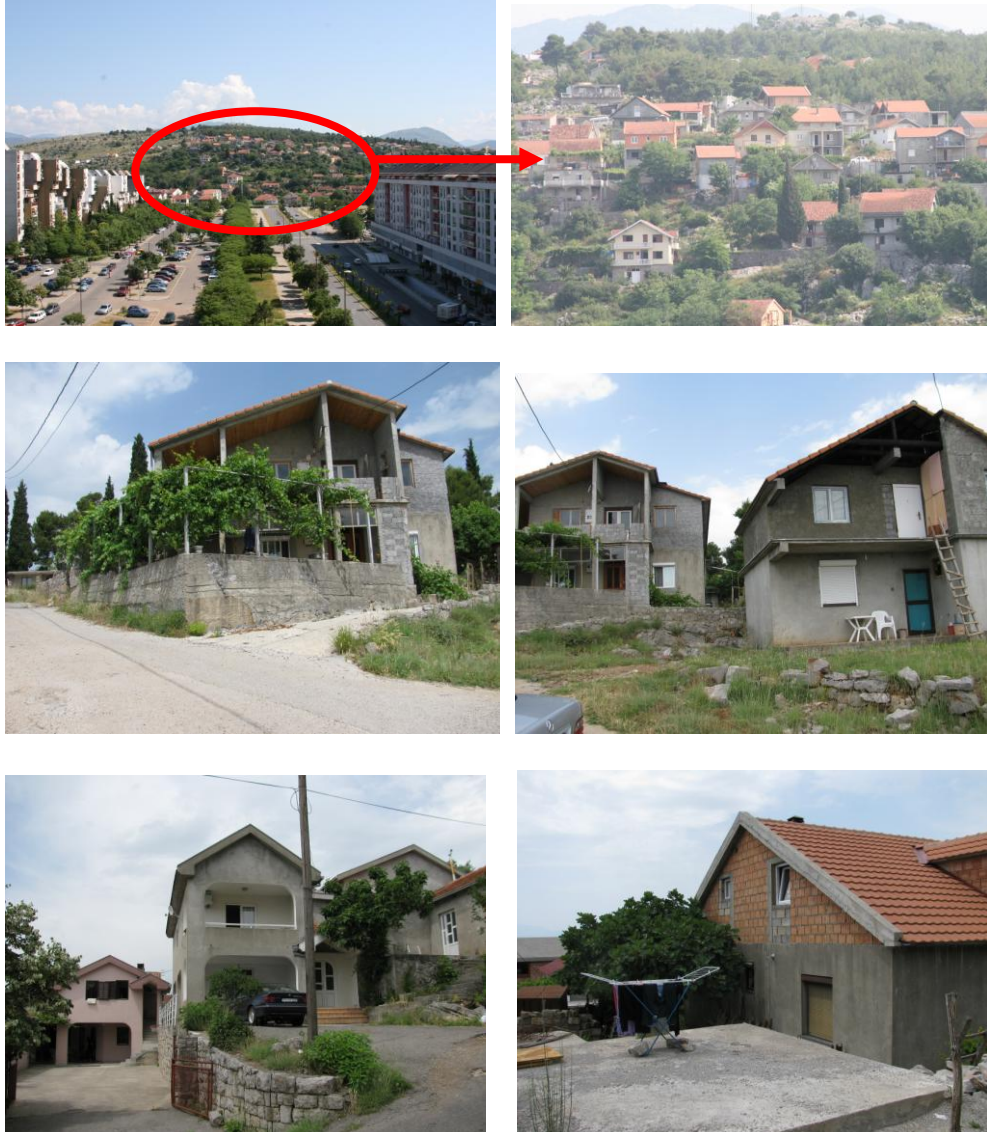


Figure 12. Refugee informal settlement, Malo Brdo, Podgorica.
(photos: author)

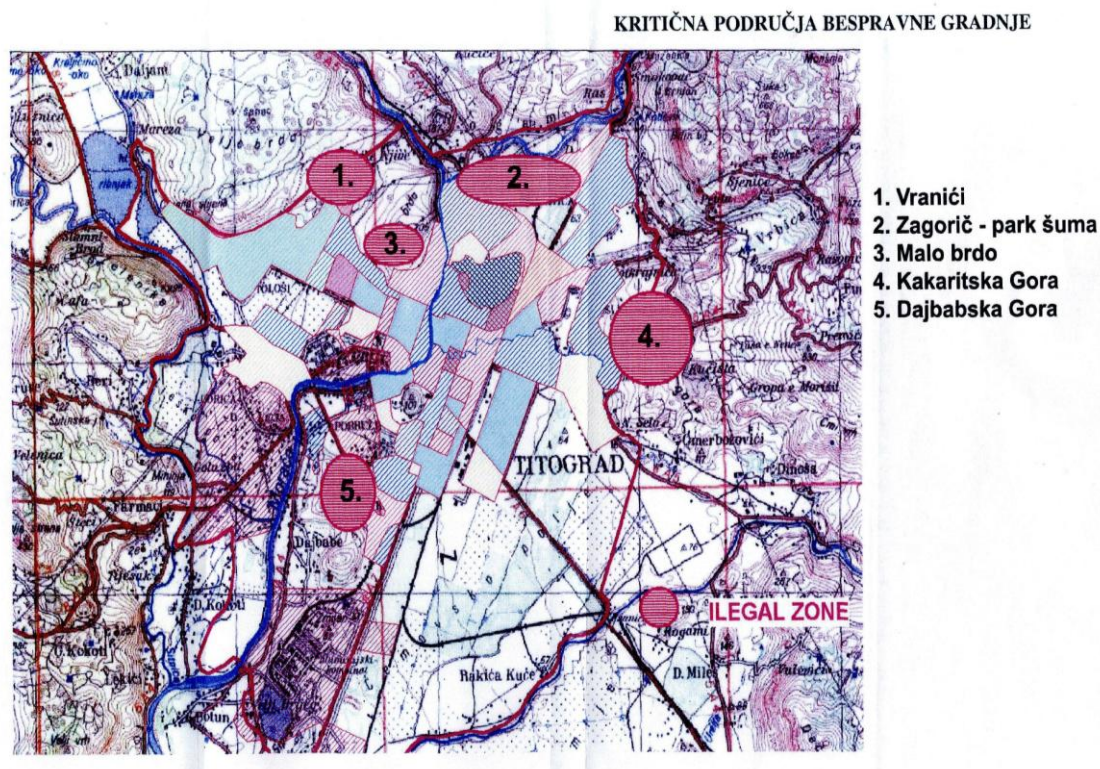


Figure 13. Illegal zones in Podgorica (source: MSPE, 2010)

The proposed policies and planning for Momisici-C, Malo Brdo hill

Since 1950 there have been five versions of GUP and more than 300 DUPs compiled for the municipality of Podgorica; the last version of the General Urban Plan was compiled in 1995 and was updated in 2011 (during the compilation of this study). It is commissioned by the municipality to a private company after a tender procedure. According to the private interviews with local planners, in 1964 the area of Podgorica covered by the GUP was ~2200 hectares, while today it is ~8464 hectares. However, the municipality didn't have the capacity to develop all necessary detailed city plans so informal development increased. Protection of state land was difficult as well. An example of squatting on state-owned land is the beautiful neighbourhood of Momisici-C near the university (figure 12) close to the centre of Podgorica.

The following information is derived from the planning company Tehnoekonomski Inzenjering that has undertaken the compilation of the detailed plan in the Momisic-C area. The beautiful location of Momisici-C is state-owned land occupied mainly by refugees from Bosnia about 10-20 years ago; 67 illegal buildings are constructed there with illegal connections to utilities. For political reasons the state tolerated this situation. Occupants have built houses randomly, without any basic parcel boundary arrangement or basic road network. The first approach to solve the problem was to "demolish" those constructions, a "legal action" according to the existing law. However the state, due to its delayed reaction and because many of these houses are of relatively good quality concrete constructions, recognizes some informal rights to the occupants. In the first phase of the plan the proposal was to keep all these houses in place without considering who the owner is but because the area has a great potential value due to its location, orientation and vegetation, a second approach was considered.

It was then proposed by the planners to establish a committee to estimate the value and the quality of these buildings. The committee checked these 67 buildings and decided that only 28 of them will be preserved. These houses passed the seismic control review and are considered to be safe. These buildings are grouped into clusters and the new plan proposes that new additional legal villas will be constructed in these neighbourhoods. The remaining 39 buildings are divided into 2 categories: 17 buildings that are built on the planned roads need to be removed, and the remaining 22 need to be improved.

Larger (multi-family) buildings are proposed to be constructed in the area, too, so that the occupants of those 17 buildings that will be demolished will be resettled there. Occupants will be obliged to demolish the old buildings at their own expense (as a penalty) and they are expected to pay only for the utilities for the new apartments in the neighbourhood but not for the construction of the new apartments. After 30 years of use and utility payment, these occupants may be given the opportunity to buy the constructions at their market value. The plan covers an area of 68 hectares of forest area, 50% of which should be preserved. Of that area about 5-6 hectares will be built by the state according to the plan, and $\frac{1}{4}$ of the area may be privatized and built-up through a tender procedure.

The pilot project in Resnik, Bijelo Polje

Bijelo Polje is the unofficial center of the north-eastern region of Montenegro. Bijelo Polje means "White Field"; the municipality has a population of ~62,000. About 4,000 of them are governmental employees (e.g., municipality staff, police, education, court, etc), about another 4,000 work at private companies and about 6,000 are retired. There are ~100 mortgages registered. According to the interviews with the experts of Erste Bank, it is identified that the bank provides housing loans and/or housing improvement loans to state employees with an interest that varies from 8.5% up to 10.95%. Special loans, up to 15,000 EUR, are offered to farmers as well with an interest that varies from 14% up to 19%. Consumer loans are also provided up to 3,000 EUR in average. The prices of apartments on the main street vary from 850 EUR/m² up to 1,000 EUR/m², depending on the age and the quality of the construction.

According to the data provided by the municipality, in Bijelo Polje so far there are identified in total 3394 illegal buildings (built or reconstructed without permits); of them about 2165 are residences without use permits (figure 14 left). An analysis of the total number shows that about 27% of these illegal buildings are in the Resnik village (90% of them are built on legally owned land and are registered in the cadastre; there is electricity connection, water supply and garbage collection service provided); 20% of the illegal buildings are in the central zone of Bijelo Polje; 11.5% in Nedakusi; 8.3% in Loznice; 5% in Nikoljac; 16.7% are settlements within the GUP area.

The municipality of Bijelo Polje in the past had developed industry (6-7 factories producing military material, shoes, concrete, etc) and most citizens were employed there but since the 1990s this industry was gradually closed. About 2500 workers have lost their jobs.



Figure 14. Illegal extensions of buildings in the urban area of Bijelo Polje (left); the plan for Resnik upgrade (right).

A pilot planning project was initiated in the Resnik village in 2009 (figure 14 right). Resnik village, with a population of 2739 people, already has a school and a medical centre and its main road was paved several years ago (figure 15). The first draft of the detailed plan has already been published and has been open to the public for objections and comments. About 95 objections have been submitted. In general the plan preserves the illegal houses except those that are in conflict with the plan, mainly those built on areas of common interest. The implementation of the plan has been made gradually, without any land readjustment and is a time consuming procedure; planning is not taking into consideration the impact on the private property rights; compensation, if provided, is usually unfair. The budget for the plan was 52,000 EUR; it was funded by the municipality and its compilation time was 12-14 months; the plan is compiled by a Spanish private company.

The land value in the area is ~ 50 EUR/m² and the minimum parcel size ~ 400 m², while the average construction cost of the buildings is ~ 200 EUR/m². The average size of the houses is ~ 200 m²; in the area there are 2 or 3 floor buildings (figure 15). It is estimated that if the average cost for communal charges for legalization may be 30 EUR/m² for the building, the occupant is expected to pay $\sim 7,500$ EUR (including the cost for the documentation $\sim 1,500$ EUR). About 90% of the people have already bought the land legally but they have built without a permit, as in the past this was not illegal. They all received basic services electricity, water, garbage collection, school, fire brigade, medical service, post, etc. Municipality experts believe that there is no way to force or motivate people to pay for legalization. It is unfair, too. People cannot afford even to pay for property taxes. If people will be evicted or forced to legalize they will probably commit a suicide. They do not have a stable job and they do not qualify for credit as they are only occupied periodically in the black market (e.g., seasonal tourism at the coastal area, construction, etc).

The municipality experts believe that as **most citizens in the municipality are unemployed** it will be unrealistic to ask them to pay communal fees, property taxes and legalization fees. The municipality in general has low revenue from property taxes and needs financial support from the central government in order to provide infrastructure and update the plans as required.

If energy improvements will be required as proposed by UNDP (see chapter 4.2), a rough estimate made by a local civil engineer is given below. For heating in winter time in Bijelo Polje citizens use mainly wood and an electrical heater but they do not

use the whole house; they heat 2 rooms only. For a 10 year old building the electricity bill is ~100 EUR/month for 7 months and ~50-60 EUR/month for the summer period. In addition, for a 2 floor house for 7 months in average ~20 m³ of wood may be needed. The expense for that is ~1,000 EUR. Much of this wood may be acquired through illegal logging, though; although truck controls are made frequently. So a total of 1,700 EUR are spent in the winter period for both electricity and wood. It is also estimated that in order to do some basic energy improvements in the house, e.g., pvc windows, double glass, roof and wall insulation, and central heating by wood, a total of 5,000 EUR may be needed. UNDP suggests that by such improvements about a 40% saving may be achieved in the electricity bill. UNDP will provide a detailed study (energy audit) on the cost recoverability options of such improvements.

In Bijelo Polje there are 2 Roma settlements of 133 citizens. The construction of a new 8 apt. building is close to finish in Ribarevina but it was said that Roma people are not willing to move there.



Figure 15. The Resnik village in Bijelo Polje (photos: author)

Informal constructions in the municipality of Zabljak

Zabljak is in the centre of the Durmitor mountain region and with an altitude of 1,456 m, it is the highest situated town on the Balkans. The municipality has a population of 4,204; the town of Zabljak itself has a population of 1,937, and there are no other bigger settlements in the region (figure 16); Zabljak is the Montenegro's center for winter sports. The entire area of Durmitor mountain is protected as a national park, and offers great possibilities for both winter and summer mountain tourism. Informal buildings in Zabljak are mainly of good quality, some are prefabricated, mostly made of wood and stone. They exist mainly within the DUP (in the center) and/or out of that in the surrounding areas not further than 5 km from the center (figure 17).



Figure 16. The town of Zabljak (left); the municipality's technical expert, the author and the mayor of Zabljak (right)

Although some existing illegal buildings are more than 30 years old, most of the illegal buildings are vacation houses owned by foreigners (mainly Russians) or wealthy residents of Podgorica or of the coastal municipalities, built during the last 10 years (mostly during the financial boom of 2007-2008). Most occupants have bought the land from the locals legally but they built without permits as there was no DUP in place. Most illegal houses are connected to the basic infrastructure; owners have paid for the connection but it is recorded that the houses are illegal. Some of those are built in the national park (350 objects); they are 2-story buildings of $\sim 100 \text{ m}^2$ constructed on parcels of $\sim 300 \text{ m}^2$. Unfortunately, according to information derived from the municipality engineers there are no regulations for the subdivision of rural land. Tourism has caused increased interest on land and real estate market during the last 3 years. Some owners use these houses for vacation residences while some others are constructing for profit.



Figure 17. Informal settlements constructed in the national park (photos: author)

In order to integrate these settlements into a plan, a committee was first established. The task of this committee was to make a list of buildings constructed within the GUP and DUP of Zabljak without building permits, or without use permits. A list was made of objects built out of the GUP Zabljak in Borje I and II to the House Borja in a width of 150 m from the left and right sides of the Regional Road Zabljak - Pljevlja and of GUP Zabljak in the direction Savinog. First the zoning plan and then the DUP had to be compiled and ratified by the parliament. By legalization owners must pay the communal fees; fees are scalable. In the A zone (which is the most expensive, with a market value of 1,600 EUR/m², and is located in the center of Zabljak) fees are 76 EUR/m² plus the costs for utilities provision; in zones B or C, within the national park, fees are less. According to the interviews there are not many poor people in the municipality that live in illegal houses, only a few Roma that mainly come during the summer period (a Roma home is shown at Figure 17 bottom right).

In the rural areas of the municipality there is no similar problem with illegal houses; it was said that farmers are allowed to build their homes and the buildings for agricultural purposes (stables/storage rooms, etc), which will be later regulated by the Spatial Plan. This is true, but the information derived from the Ministry of Agriculture is quite different (see more in chapter 3.2.1). Property taxes are ~0.5% of the market value; buildings used for agricultural purposes are not taxed.

The total number of identified illegal buildings constructed without building permits is 1047, while those used without use permits are 1592.

The inventory of illegal buildings constructed without building permits, or without use permits is given below (source: municipality of Zabljak):

R. br.	District	Number of buildings constructed without building permits	Number of buildings used without use permits
1	DUP Žabljak	48	593
2	Prisoji i Pitomine	117	117
3	Pejov do	75	75
4	Kovačka dolina	77	77
5	Tmajevci	135	135
6	Meždo	112	112
7	Tepačko polje	68	68
8	Javorovača i Lučevača	72	72
9	Borje	66	66
10	Motički gaj	277	277
TOTAL		1,047	1,592

3.2 Brief historic Review of Land Administration, Real Property Taxation and Planning Regulatory framework

This section includes brief information about the history of land tenure, legal rights on land and real estate, land administration and property market regularization, taxation of real estate, and the planning system.

3.2.1. Security of tenure and Property registration

The cadastre in the greater region of Montenegro dates from the 19th century and is based on the system of the Austro-Hungarian Monarchy and the common principles developed at that time. Security of tenure in Yugoslavia was provided in the region by the pre-existing registers, which were the Inventory Cadastre (an alphanumeric statistical record without any accompanying maps) and the Land Cadastre (Dimova & Cenova, 2004).

The **Inventory Cadastre** was established in the 1950's and provided records of self-declared information -about parcel area- by the "current possessors", not accompanied by any documentation and not checked by the authorities for correctness; its purpose was fiscal and it is not accompanied with a map and buildings were not recorded.

Since 1958 the socialist government of Yugoslavia has nationalized all urban areas that were covered by detailed urban plans as well as all the dwelling houses. The state took ownership rights from the owners and offered them only rights to use the houses.

The **Land Cadastre**, was established in 1976, and provided improved information about parcels and their owners and users/social owners related to cadastral surveys produced by geodetic and photogrammetric means. Buildings are recorded (up to the ground level) on maps and accompanied by records of apartment users. Land Cadastre offers 100% coverage of the territory.

Since 1988 the **Real Estate Cadastre** was introduced in Serbia and Montenegro. In 2007 the Law on State Surveying and Cadastre of Immobile Property was adopted in Montenegro- property owners were asked to mark their parcel boundaries at their expense prior to the cadastral survey. By today in Montenegro *cadastral maps cover about 65% of the territory* (almost all inhabited lands); however, this percentage may be misleading as *it refers to mapping of the terrain only, and there are no data available about the percentage of the registered private property rights*. In many cases there are multiple owners claiming rights on the same piece of land. The cadastre in Montenegro is organized into 81 territorial cadastral units of cadastral municipalities and cadastral districts (Helleren, 2011). Cadastral unit structure is identical with the administrative structure. In areas not covered by the Real Estate Cadastral maps the two other earlier cadastral records are still valid. There are no maps for those parts of the territory that are not covered by the Real Estate Cadastre. The impression derived from the interviews during the visit to the Real Estate Administration office in Podgorica is that so far an emphasis is given on the mapping of the territory and not on the privatization of land and registration of private ownership rights. It was said that during socialism people had only the land use rights on real estate, the rate of illegal development was small and the state could "control" development better (!) Today, it is up to the individuals to require transformation of

their rights to use into ownership rights. However individuals, too, are not especially interested in that unless they intend to sell the property; this mentality/culture about property registration (of both people and state employees) is the legacy from the socialist regime when no land market existed.

Privatization of real property started in Serbia and Montenegro in 1992; *in 2004 a Law on Restitution of ownership rights passed in Montenegro but its implementation is doubtful* (UN ECE, 2006). *The percentage of state owned land is great*, however. Owners or their descendants were not able to register in the Cadastre immediately after privatization because the buildings were not registered in the cadastre yet. Due to the unreliable status of the land books and the fact that land books were not updated properly after the Second World War (real estate used to be sold, rented etc. without prior entry into the land registers) even the courts protected the “real” holder of the real estate more than the “registered” owner.

Due to the above described situation it can be concluded that *the procedure to convert use rights into ownership rights is quite complicated as it is a completely judicial procedure*. Although *it does not involve any purchase of land*, the land-users need to bring to the court all necessary evidences (inheritance documents, proofs/evidence for being registered as the holders of use rights, etc). The situation is easier for those who fulfil the criteria, are recognized Montenegrin citizens and live in the country; Montenegrins who live abroad find the procedure very bureaucratic and time consuming. Descendants of property owners need first to declare the death of the owner to the population registration office (within 30 days following the death); then the population registration office reports to the court; the court decides about the necessary subdivisions of the properties to the heirs who need to stand before the court during the trial. Not all of them are available to do so.

Once the necessary documents are available the new holders of use rights must pay a three EUR tax fee and submit an application to be registered at the property cadastre. Land of which its holders failed to submit proper papers during the compilation of the cadastral survey is registered as “state-owned” land. There are no available data about the percentage of properties in the urban land that have been restituted or privatised already. However, as informed by a distinguished Montenegrin lawyer, *large land complexes that are considered of significant value for the state are exempted from restitution*. Expropriation should take place instead. There are no available data on the amount of expropriated lands or on the amount of compensation.

Personal interviews compiled for the purposes of this study surprisingly identified that e.g., the municipality of Bjelo Polje, in order to easily facilitate planning purposes and to avoid any compensation, decided that all land belongs to the municipality and that the people may still have only the right to use the land. Interviews conducted in Podgorica identified that *if private land is taken for planning purposes it is not expropriated in a fair value; the common practice is to offer state bonds of lower value than the purchase value declared on the contract. Such state bonds may be sold for 20-30% of their value in the market, or people may gradually exchange these with their electricity bills*.

It was also identified that most of the refugees (those who lived in the greater region and came to live in Montenegro from the neighbouring districts of the former

Yugoslavia due to the conflicts), even if they stay and work in Montenegro for several decades, and despite the fact that they are tax payers, they were unable to obtain citizenship until 2008. In any case even now the procedure for that is difficult and bureaucratic, since they need to go back to their origin cities, get copies of the records and several other necessary documents and go through a court procedure in order to get the Montenegrin citizenship. Only their descendants, those born in Montenegro, can obtain the citizenship easily. *Citizenship is necessary in order to register a house to the cadastre.* According to the Citizenship Law of 2008 a recognized refugee in Montenegro, by the procedure set forth in the Law on Asylum, may be granted Montenegrin citizenship if he or she fulfils certain requirements. *Accommodation in legal housing is not required* in order to obtain citizenship.

In March 2009 the Act called “The Property Relations Law” was introduced, by which the same treatment of foreign citizens as nationals for acquiring movable and immovable property was allowed, with some limitations for the agricultural land, providing for long-term leasing as an alternative.

The data in the Real Estate Cadastre in Montenegro is organized into four sheets: A sheet contains data on the real estate; B sheet contains data on the holder of the rights on the real estate; V sheet contains data on buildings and other improvements; G sheet contains data on encumbrances. Until recently, illegal constructions could be registered in the cadastre, as long as the occupants acquired a use permit of the land. *Illegally constructed buildings were then noted in the G sheet as an encumbrance, “teret”.* According to a new Law which defines that only a building for which a use permit has been issued may be registered in the Real Estate Cadastre, which implies previously issued building permit, illegal buildings may no longer be registered in the cadastre.

To a small extent, state land is being auctioned by the Directorate for Real Estate of Podgorica for real estate development purposes. This Directorate is also responsible for short-term land leases of up to one year. Detailed data are not available.

During the socialist era in Yugoslavia, rural land had gone through several agrarian reforms aiming to improve agricultural production and fight poverty. During these reforms the ownership of rural land was treated differently. In 1946 villagers pooled their land and livestock in cooperatives (similar to the Russian Kolkhoz). In 1949 participation in the cooperatives became obligatory. At the peak of the cooperative era, cooperatives included about 15% of the total number of agricultural households and 12% of the arable land. Private farms continued to hold 80% of the land even during the period of the most severe pressure for collectivisation. In 1953 the concept of socially owned farms (land and enterprise) was introduced, as a tool to improve productivity. Most cooperatives were disbanded and land was returned back to the farmers in areas up to maximum 10 hectares by the Law on Public Land and Distribution of Land to Workers’ Agricultural Organizations. The rest of the disbanded cooperative land was considered to be social or public land, and that way large socially owned agricultural enterprises (SOE) were created. Village pastureland was also given to SOE. Social ownership came to mean that all members of an SOE were jointly assigned permanent usufruct rights to the enterprise and its features while society at large maintained the ownership rights (Melmed-Sanjak et al, 1998). Usufruct rights were issued to the poor who were working in the SOE and were

registered in *posedoven lists*. Owners of the private rural land were obliged to cultivate their land; if they failed to do so this had to be done by the People's board and the land could be temporarily (1-3 years) given to the SOE. For a transaction of private rural land the SOE had a priority to purchase over other private farmers. Fragmentation of rural land was also prohibited. *According to the Law on property restitution, former owners who transferred the property rights into public, state, social, or cooperative ownership by a legal transaction or unilateral document, shall not be entitled to restitution or compensation. This fact burdens rural development and productivity according to the Ministry of Agriculture and Rural Development. Today, it is also possible for land use right holders to convert their rights into ownership rights in the rural areas.* However, there has not been any state action to motivate farmers to acquire ownership rights on the rural land. Today, Montenegro's agriculture is labour intensive; it plays a role of a social buffer, as the main source of income or partial income for more than 60,000 of rural households. The structural characteristic of agricultural land is the low-productivity small family farm of an average size of approximately 5 ha. According to the interviews at the Ministry of Agriculture, agriculture in Montenegro is improving gradually. Recently the Ministry announced *a first call for investment in agricultural holdings for various projects, e.g., reconstruction of agricultural facilities/buildings. These projects are equally co-financed by the state and the World Bank. However, these projects face serious delays as all the facilities need to be legalized first.* According to the previous spatial planning legislation and until 2008, in the rural areas (where no detailed plans exist) both rural houses and agricultural facilities did not need a construction permit. Instead a *letter of acceptance* of the construction from the municipality was sufficient. *According to the new spatial planning law all rural constructions must be legalized but as there are no detailed plans available, this will take 1 or 2 years at least. This creates a big mess in several municipalities.*

According to the Ministry of Agriculture and Rural Development, there are four types of tenure in the rural areas in Montenegro: (1) privately owned farms; (2) state owned forests that belong in the responsibility of the Department of Forests; (3) *cooperatives which still exist since the socialistic era. In such areas legal rights on land are not reconstructed, land is not used properly and this has a huge impact on the good functioning and the productivity;* and (4) "katuns", which are historic land use rights of farmers on state owned lands for specific agricultural purposes; e.g., each farmer for several years uses particular hills for grazing his own cattle in the summer. The Ministry believes that such legal rights need to be clarified and that legalization of rural buildings needs to be given priority so that investment for improvements in agriculture will be facilitated. Another problem mentioned in the interviews was the *increased phenomenon of abandoned rural lands* due to poverty and migration to the urban areas.

Unfortunately, according to the interview of the Directorate for immobile real estate property in Podgorica, *there are no statistical data on the percentage of private and/or state owned land or on the registered private property rights both in urban and/or rural areas.* There are predictions that there must be a large percentage of state owned land (urban and rural) which is under the use of the central government or other state local agencies, the municipalities, or other state institutes. State owned rural land is probably not cultivated and a traveller entering the country from the Albanian borders can easily recognize the fact (e.g., 98% of the land from Bozaj to

Tuzi belongs to the state). *The Ministry of Agriculture and Rural Development supports legalization of illegal constructions in the rural areas.*

According to the WB Doing business 2012 report globally, Montenegro stands at 108 in the ranking of 183 economies on the ease of registering property. A summary of procedures for registering property in Montenegro, and the time and cost, is given below:

“The buyer goes to the local branch of the Agency for Real Estate to obtain an excerpt on the property, proving the seller’s ownership (this takes 1 day and costs 5 EUR for the Republic Administrative Tax, plus 3 EUR to the Agency for Real Estate). It is a standard practice for the buyer to check the boundaries and limitations of the property against the excerpt obtained at the local branch of the Agency for Real Estate. If it is the buyer’s lawyer that does this, which is normally the case, he may include this into his fees. It is standard practice for involved parties to hire a lawyer to draft the sale-purchase agreement.

A new standardized form for the sale-purchase agreement is now available online at <http://www.nekretnine.co.me/>) (this takes 1 day and costs 200-300 EUR). It is mandatory that the sale-purchase agreement be notarized. Authentication of contractual parties' signatures on the sale agreement is done by the jurisdiction of basic courts. They act only as a witness (checking the signatures of the seller and buyer) (this takes 1 day and costs 10 EUR). The Municipal (basic) court delivers the sales agreement with the authenticated signatures to the tax administration.

During this period the tax authorities will compare their valuation of the property with the sale-purchase agreement price. They will assess how much the buyer should pay as transfer tax (3% of the property value) and assign a bank at which to pay. The buyer must then go to the tax administration office to get a copy of the agreement with the stamp (clearance) (this takes 10-30 days). The buyer will take the amount assessed by the tax authorities to pay as transfer tax, to deposit at a bank assigned by the tax authorities in their account (this takes 1 day and costs 3% of property value).

Parties fill in a standard form or make a simple written request at the local branch of the Agency for Real Estate in order for the name on the property to be changed to the buyer’s. The resolution on change of property ownership is made within 8 working days. The Head of the Unit signs on the resolution and it is delivered to the parties. Once the resolution is made, parties have the right to appeal against the resolution within 8 days at the Ministry of Finance (cost is 5 EUR). If there are no complaints within the deadline of 8 working days, then a request for issuance of cadastre excerpt is submitted to the Real Estate Agency. This costs 8 EUR and is issued on the same day. The law precisely states that the property ownership change has to be executed within 20 days. Registering in real estate cadastre is defined by Law on state survey and real estate cadastre ("Official Gazzette of Montenegro" No. 29/07)".

Findings

- *The fiscal Inventory Cadastre, established in the 1950’s, provided records of self-declared information -about parcel area- by the “current possessors”, not accompanied by map and not checked for correctness. Since 1958, the state nationalized all urban lands; the state took ownership rights from the owners*

and offered them rights to use the houses. The Land Cadastre, in 1976, provided information about parcels and their owners and users/social owners related to cadastral surveys. Buildings are recorded (up to the ground level) on maps and accompanied by records of apartment users. Since 1988 the Real Estate Cadastre was introduced in Serbia and Montenegro which today covers 65% of the territory of Montenegro with cadastral maps. In the remaining areas the two other earlier cadastral records are valid. According to the WB Doing Business 2012 report globally, Montenegro stands at 108th in the ranking of 183 economies on the ease of registering property. It is mandatory that each sale-purchase agreement is notarized. Authentication of contractual parties' signatures on the sale agreement is done by the jurisdiction of basic courts.

- *An emphasis is given by the state on the cadastral mapping of the territory and not on the privatization of land and registration of ownership rights. People, too, are not especially interested in transforming use rights into ownership rights unless they intend to sell.*
In 2004 the Law on Restitution of ownership rights passed in Montenegro but its implementation is doubtful. Transfer of use rights into ownership (both in urban and rural areas) does not require purchase of land for those who fulfil the criteria and have acquired the Montenegrin citizenship. However, former owners who transferred the property rights into public, state, social, or cooperative ownership are not entitled to restitution or compensation. Large land complexes that are considered of significant value for the state are also exempted from restitution. Expropriation is supposed to take place. Expropriation, as declared by the people, is never made according to the market values though. If private land is taken for planning purposes it is not expropriated in a fair value; the common practice is to offer state bonds of lower value than the purchase value declared on the contract. Such state bonds may be sold for 20-30% of their value in the market, or people may gradually exchange these with their electricity bills.
- *There are no available data on the amount of registered private properties, restituted properties, and/or expropriated lands or on the amount of compensation.*
- *Many refugees lack citizenship and property rights. Citizenship law of 2008 grants the Montenegrin citizenship to the refugees under certain criteria.*
- *Since 2009 foreigners can also acquire real property; in agricultural areas foreign buyers are offered long-term leasing instead of ownership rights.*
- *Until recently, illegal constructions could be registered in the cadastre as an encumbrance, as long as the occupants had the Montenegrin citizenship and a use right/permit of the land. According to a new law, illegal buildings may no longer be registered in the cadastre.*
- *The percentage of abandoned rural land and of state owned land is great; to a small extent, state land is being auctioned by the Directorate for Real Estate of Podgorica for real estate development purposes.*
- *Current projects both for restitution of private property rights and for property rights registration are slow, cumbersome and are influencing*

negatively the economic situation of the local people and the real estate market in both urban and rural land, encouraging informal development.

- *According to the new spatial planning law all rural constructions are considered to be illegal and must be legalized but as there are no detailed plans available, this will be delayed more than 2 years. This creates mess in several municipalities and serious delays to the WB rural investment projects, too.*

3.2.2. Real property taxation

Efficiency of property taxation is poor in Montenegro. Until 2003 real estate property taxes were collected centrally. *Since 2003, by Law, real property annual tax revenue is collected by the municipalities* and represents the major income of the local authorities, who have full authority. The Law on Immobile Property Taxation (Ministry of Finance) defines the taxation policy for the whole territory and defines the range- as a % of the property value- within which the property taxes are defined. The rate is scalable and it varies according to the land zone the property lies in, the age of the building, the number of family members, and the “use” of the building. Tax rate is smaller in cases of first residences, while it may be doubled or tripled in cases of summer houses or commercial constructions. The real property tax is defined as a percentage of the market value of the property. The national agency for statistics MONSTAT collects and records the sale prices and publishes data of market values in the various municipalities. The municipalities use these data to estimate and charge the property taxes within the frame of the law. *The people of Montenegro and the greater region do not willingly pay property taxes. It is also a question of affordability considering that the average monthly net income in Montenegro is ~518 EUR* (e.g., in Bar for a 200 m² residential building the average annual property tax is 200 EUR; this is not the only property annual costs that they should pay though). *It is estimated that roughly only 20-30% of the real property owners manage to pay their property taxes.* According to the interviews in the tax office of Podgorica, the municipalities of Tivat and Kotor are the most successful ones in collecting property taxes; the municipality of Podgorica follows.

Occupants of illegal buildings, if registered in the cadastre, are expected to pay property taxes as well. Those not registered do not pay annual property taxes. However, most of illegal constructions are connected with electricity and the occupants are then registered in the records of the electricity company as illegal electricity users and pay those fees charged in the electricity bill to the municipality.

Real property sales taxes (property transaction taxes) are collected centrally by the Ministry. *Buyers of those illegal buildings that are registered in the cadastre are expected to pay the transaction sale taxes, too.* During the period 2007-2008 the general transaction tax revenue was extraordinary high due to the increased market interest in Montenegro. *Since 2009, market prices have decreased and the revenue has significantly decreased. The buyer is supposed to pay the transaction property tax. In the past the buyer was expected to pay the tax in advance, prior to his/her registration in the cadastre. Today, this has been reversed;* the sale is taking place in the court. Once completed, the court submits the necessary documents (the sale decision and the change of owner) to the tax office; the buyer registers in the cadastre and is expected to pay the property transaction tax to the tax office; if he fails to do so

the tax office sends the bill to the buyer who is supposed to pay within the following 10 days. *If the buyer fails to do so the tax office can register the debt to the cadastre as a mortgage on the real estate. There are no available statistics on that.*

The tax rate on real estate transfers was raised from 2% to 3% on 7 January 2008, and is intended to generate significant additional revenue for the federal budget.

Findings

- *Montenegrin people do not willingly pay taxes, nor in the greater region. It is also a question of affordability considering the average annual income of the middle/low income families; it is estimated that roughly only 20-30% of the real property owners manage to pay their property taxes. The tax rate on real estate transfers was raised from 2% to 3% on 7 January 2008.*
- *Occupants of illegal buildings, if registered in the cadastre, are expected to pay property taxes as well. Those not registered do not pay annual property taxes. Buyers of illegal buildings that are registered in the cadastre are expected to pay the transaction taxes, as well.*
- *Since 2003, by law, real property annual tax revenue is collected by the municipalities; the buyer is supposed to pay the transaction property tax. In the past the buyer was expected to pay the tax in advance, prior to his/her registration in the cadastre. Today, this has been reversed. The tax is paid following registration, if the buyer fails to do so the tax office may register the debt to the cadastre as a mortgage on the real estate.*

3.2.3. Real Estate Market and illegal buildings

Housing shortages in large cities, further aggravated by flows of refugees and IDP's, have led to a variety of housing arrangements. *Many homeowners' units were shared with tenants, sub-tenants or relatives (at least 3,500 in 2006).* Management of apartment buildings was regulated by the Law on Housing Property; *collection of maintenance fees is poor (10-14 per cent of owners). Often, in case of emergency repairs, the municipalities have to finance the difference.* In fact, the annual deficit in Podgorica for the 20,000 apartments covered by the municipality in 2006 was 300,000 EUR.

Illegal buildings, if registered, can be sold and/or mortgaged depending on the bank's agreement (usually banks do not mortgage illegal buildings unless the applicant owns the land and the value of land covers the loan). Property transaction/sale taxes for illegal buildings are lower than those charged for the legal constructions. However, there is no significant property market for illegal buildings. *Usually occupants of illegal buildings are not interested to sell.* Personal interviews compiled for the purposes of this study have shown that *citizens of Montenegro and displaced refugees are emotionally attached to real property, especially to land.* Although they would readily participate in sale of apartments, they would never accept to sell their land-even if they were in great need. This resulted in a weak land market both within urban and/or rural areas. In the sub-urban or rural areas, where the majority of illegal houses exist, people are using the land parcel, where their houses are built, to produce their food, too.

The profession of notary did not exist in Montenegro until 25 of July 2011, although the assistance of notaries in the acquisition of rights and registration process is valuable ensuring that property transactions are completed quickly and are attractive to finance. “Real estate agent” companies and individuals serve the market. Some agents are well organized and able to provide listings of available property to buy or let. The usual fee for matching a buyer and seller is 3-10% of the sale price. Some agents also match landlords with tenants but without providing a management service after letting. There is currently no association of estate agents. The agent or a lawyer prepares the contract which is signed by both parties in front of the court. A purchase contract may be made even before the completion of the construction. The contract is produced in 7 original copies of which two must be presented to the court for certification, one for the Real Estate Department, and two copies for the seller and two for the buyer (see Appendix).

According to information derived from a private interview with a local real estate agent in Podgorica the usual procedure, is similar to the one described by the WB but it includes some interesting details in terms of efficiency; it may be described as following. Before a transaction is made the buyer usually hires a real estate agent or a lawyer to check the cadastral records for encumbrances and the validity of the title; in case of subdivision of land a private surveyor is also involved. Entry to the cadastral records is permitted by request. The cadastral code is a 13 digit code related to the name/person. The cadastral data base is a “*person-centric*” system. The lawyer or the agent prepares the contract (usually fills out a standardized form). The payment modus is prescribed on the contract. The agent together with the involved parties (buyer, seller and, in case of mortgage, the attorney/bank representative) go to a basic court for sealing it. There are 13 basic courts in Montenegro. This stage usually takes one day. Court charges are scalable depending on the value of the real estate starting from a minimum of 10 EUR. The agent’s tariff is usually 150 EUR. The court decision is administratively submitted to the tax office; sales taxes are 3% of the value. Citizens that have been also interviewed claimed that the tax office may doubt the declared value of the property on the contract, and may even double it. Sales for first residence are not charged any sale taxes.

Usually, the buyer brings a copy of the sealed contract to the cadastral office for registration. This stage, although by law is expected to be completed within 1 month, in practice may even take 3 months, but may be shortened by bribing. Cadastral registration charges are 13 EUR per registration (fixed).

The agent identified the *following weaknesses* of the system that create fraud:

- (a) the basic courts are usually overloaded by a variety of cases,*
- (b) the basic courts are not well organized and therefore access to court records to check if the property has been sold but not yet registered in the cadastre is impossible,*
- (c) entrance to the cadastral records is only possible by the name of the owner not by the object; this requires more effort to identify the particular property under sale,*
- (d) cadastral offices are also inefficient and delay the registration process.*

The above weaknesses cause corruption, malpractice and fraud; several double sales have been conducted and there are several court cases due to that. The “priority

principle” in registration of transactions is not well secured by this system. Certified lawyers, with experience in commercial courts, after specific training, became notaries and are expected to replace the court stage after July 2011.

Findings

- *The profession of notary did not exist in Montenegro until 25 of July 2011; “Real estate agent” companies and individuals serve the market; the usual fee for matching a buyer and seller is 3-10% of the sale price.*
- *The inefficiency of the courts and the cadastral agency encourage fraud.*
- *Citizens of Montenegro and displaced refugees are emotionally attached to land; in the sub-urban or rural areas, where the majority of illegal houses exist, people are using the land parcel, where their houses are built, to produce their food, too.*
- *This resulted in a weak land market both within urban and/or rural areas. Many homeowners’ units are shared with tenants, sub-tenants or relatives. Collection of maintenance fees is poor (10-14 per cent of owners). Often, in case of emergency repairs, the municipalities have to finance the difference.*
- *Illegal buildings, if registered, can be sold and/or mortgaged depending on the bank’s agreement (usually banks do not mortgage illegal buildings unless the applicant owns the land and the value of land covers the loan).*
- *Private real estate agents identify the following weaknesses of the system that create fraud:*
 - (a) the basic courts are usually overloaded by a variety of cases,*
 - (b) the basic courts are not well organized and therefore access to court records to check if the property has been sold but not yet registered in the cadastre is impossible,*
 - (c) entrance to the cadastral records is only possible by the name of the owner not by the object; this requires more effort to identify the particular property under sale,*
 - (d) cadastral offices are also inefficient and delay the registration process.*

3.2.4. Spatial Planning and construction permitting

Construction is permitted in Montenegro also in areas without Detailed Urban Plans, as long as a Local Location Study is in place.

National spatial planning is within the responsibility of the Ministry of Spatial Development and Tourism, while urban planning is performed by the planning departments of the municipalities (Figure 18).

The National Spatial Plan (NSP) of Montenegro was adopted in 2008, and the Spatial Plan of Special Purpose Area for the Coastal Zone was adopted in 2007.

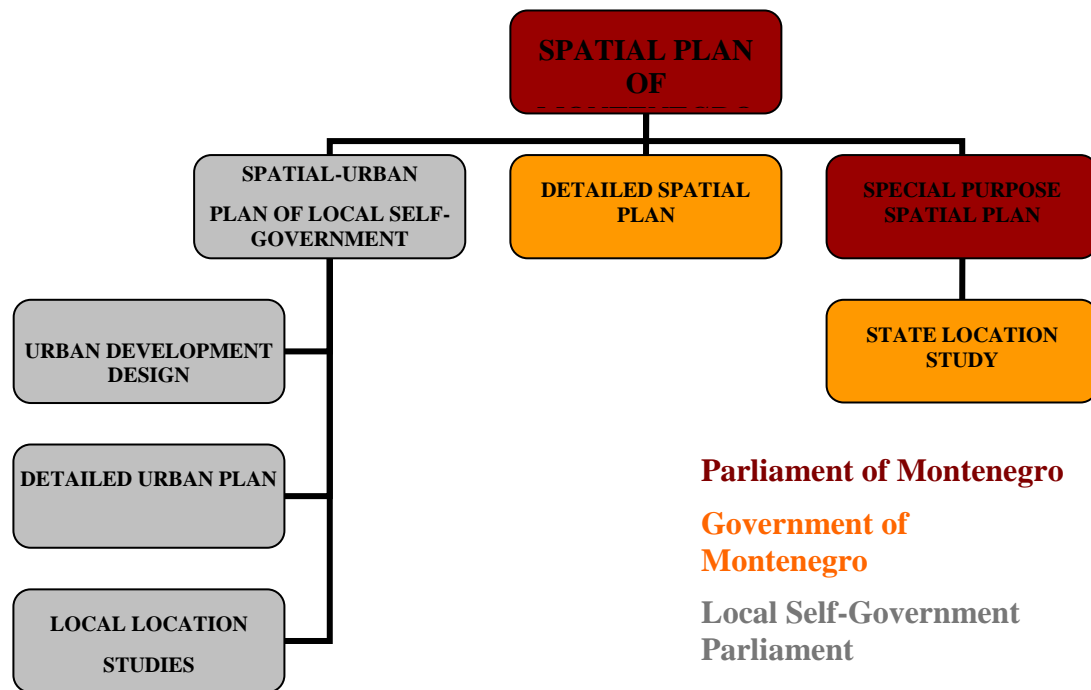


Figure 18. Levels of spatial planning and responsibilities (source: MSPE, 2010)

National spatial planning in Montenegro includes the following levels of planning:

- Spatial Plan that regulates the whole territory of Montenegro,
- Spatial Plans of Special Purposes, and
- State Location Studies in Scope of Spatial Plan for Special Purposes.

On the local level, planning documents include:

- Local Spatial Plan of the local self-government,
- General Urban Plan, Detailed Urban Plan, and
- Local Location Study.

On the basis of the National Spatial Plan the municipalities prepare the Local Spatial Plans and the General Urban Plans (GUP) for the municipalities; on the basis of the GUPs the Detailed Urban Plans (DUP) are made. A World Bank Land Administration and Management (LAM) project initiated in 2009 (5 years duration) is supporting the elaboration of GUPs in several municipalities in the northern and a few in the central region (Danilovgrad, Cetinje, Bijelo Polje, Plav, Kolašin, Šavnik, and Nikšić).

There are two types of detailed city plans:

- DUPs for municipalities and
- Local Location Studies (LLS) for a location which can be applied in areas within the GUP but where there is no DUP in place, or outside the GUP areas of the municipalities.

DUPs and LLSs must be in compliance with the NSP and GUP respectively. Each municipality takes decisions on the basis of the investors' requests. The municipality commissions the LLS to the private sector, through a tender procedure, usually for a greater complex area than the investor's requirement. *By law the municipality should*

undertake the costs for the compilation of the Local Location Studies which is supposed to be covered by the communal charges/fees collected by the municipalities (for utilities provision and connection); in practice, as there is a shortage of money for that purpose, investors undertake these costs.

These costs for an area of e.g., 10,000 m² may be approximately 0.5 EUR/m²; these costs are finally deducted from the communal charges the investors have to pay to the municipality for the utility provision and connection. *Many small investors though, in private interviews, claimed that they had paid both the communal fees to the municipality and the costs for utility connections to private companies in order to speed up the process.* The communal fees for connection to utilities in Podgorica for e.g., a house of 100 m² are 10,000 EUR. The NSP and other higher level projects (special purpose spatial plans) for Montenegro are also commissioned to the private sector through a tender procedure and once finished they are approved by the parliament. Once the plan is ratified it becomes law. The Spatial Plan for Montenegro is updated/revised every ~15 years (e.g., in the years 1974 and 2000). The GUPs for municipalities and DUPs are commissioned to the private sector through a tender procedure and approved by the municipalities. During the compilation of GUPs, DUPs and/or LLSs citizens may submit objections. Only recently (in the 2009 report) is there an indication that citizen participation in the planning procedure is considered by the state. However, *the procedure is still highly centralized, expensive and absolutely inflexible* as the Ministry may return the planning document for modification to local self-government before the draft is established and public hearing is started, which has been the case a number of times. *Planning regulations and land takings do not take into consideration the impact on properties value. The Ministry is in favour of field inspections (spatial protection inspection, urban planning inspection, inspection for construction structures, ecological inspection, etc).* However, *according to the international experience, field inspections are costly and in most cases lead to more corruption.* Small investors, during private interviews, claimed that although inspectors are very tough with them, there are weak with big investors. They claimed that inspectors are usually vulnerable to bribing offered by big investors. Inspections may be focused on the bigger nationally protected areas e.g., National park „Durmitor”, National park „Skadar Lake”, National park „Biogradska gora”, National park „Lovcen”, National park „Prokletije”, canyon of River Tara, etc while *general automated procedures and mechanisms should be adopted for the monitoring of the environmentally sensitive areas.*

Local Planning should be more flexible in order to meet citizens' and the local market's needs. Empowerment of local authorities and citizen participation can and should be significantly improved.

Private interviews with local experts conducted for the purposes of this study show that, as in June 2011, the procedure of construction permitting for housing requires several steps and may last approximately one year on average. The various steps include:

- Acquisition of an extract of the DUP (with the urbanistic technical conditions).
- Acquisition of a certificate with the details and the individual plans that have been compiled to fulfil requirements for utility connection with e.g., water supply; certificate for electricity supply; certificate for telecommunication.

- Compilation of a study for the geo-mechanic conditions and seismic efficiency of the building.
- Based on the above the authorised company should make the plans (architecture, studies for water, electricity, fire protection, etc).
- After the project is submitted then a revision committee chosen by the municipality (*usually this committee is another private licensed company*) reviews the individual studies.
- Final approvals are then issued by all the relevant public services for all individual studies (e.g., the water supply authority, electricity company, fire protection authority, sanitary company, traffic authority, cultural/archaeological service, etc).
- Submission of all these documents, studies and approvals by the investors.
- Application for a construction permit.
- In case of boundary disputes the investors must inform the neighbours.

The Ministry of Spatial Development and Tourism (Minister's report of 2009) has announced that the building permitting and use permitting procedure *for those constructions that are within its responsibility* had been simplified in 2008; the Ministry has shortened administrative procedures of issuing building permits and use permits (only two administrative acts are issued) and in 2009 has issued 104 building permits and 65 use permits through that procedure.

However, globally, *Montenegro still stands at 173rd in the World Bank ranking of 183 economies on the ease of dealing with construction permits. According to official data collected by the World Bank for the 2012 Doing Business report for Montenegro, dealing with construction permits there requires 17 procedures, takes 267 days and costs 1469.9% of income per capita* (WB 2012 Doing Business report for Montenegro, page 25). A summary of procedures for dealing with construction permits and the time and costs required for building a **simple commercial warehouse** (of limited liability, domestically owned and operated in Montenegro's largest business city, Podgorica, of an estimated value of 715,000 EUR), connect it to basic utilities and register the property so that it can be used as collateral or transferred to another entity, is given below in an effort to emphasize that facilitating the local entrepreneurs is a critical issue for the country's national economy.

- Obtain proof of ownership from the Real Estate Administration (1 day, 5 EUR).
 - Obtain a copy of the site map from the Real Estate Administration (2 days, as graphical database is not digital and analogue plans need drafting for each separate project, 8 EUR).
 - Obtain urban development and technical requirements from the municipality.
- The new Construction Law (2008) provides for companies not to enter into time-consuming procedure of obtaining the decision on location as a precondition for entering the design phase. This process is done at the stage of issuance of building permit. At the pre-design stage it is sufficient to follow the urban-technical conditions for that particular area contained in the general or local spatial plan. However, Podgorica does not have a completely updated set of technical conditions, detailed spatial plans and maps yet. According to the implementation regulations there is a one year period for each local government to adopt its local

detailed maps and plans. Thereafter, spatial plans, urban technical conditions, requests for issuance of construction permits, construction permits and commencement of construction works notices are to be published on the governmental web sites. The implementation period for all local authorities to introduce web-based platforms is also one year and has not expired yet. The responsible authority for projects less than 3,000 m² is the Municipality of Podgorica. This procedure takes on average 60 days. According to the new Construction Law (2008) Article 88, the process of review of conceptual project and main project may be conducted by a business organization which is licensed and which meets the conditions referred to in Articles 83, 84 and 85 of this Law. The review of the conceptual project and the main project must not be performed by a person who participated in producing such projects. Previously this function was performed by the Ministry of Economic Development (60 days EUR 150).

- Obtain main project study.
Investor must hire a licensed design and engineering company to create the main project study. The cost is between EUR 6 to 10 per m² (60 days, 13,006 EUR).
- Obtain fire protection study.
Investor must hire a private licensed company to create a fire protection study and sprinkler installation project. The study is later submitted to the Ministry of Interior for clearance. The sprinkler installation system is required for buildings over 400 m² and for industrial buildings. The creation of the study costs between 300 EUR and 600 EUR.
- Obtain clearance to connect to the electricity network.
In Podgorica investor would have to pay for the initial clearance from utility companies (20 days, 200 EUR).
- Obtain clearance to connect to the water and sewerage network.
Article 62 of the new Construction Law (2008) stipulates that the utility companies are required to issue any preliminary clearance to provide connection to their services before the design stage. It is assumed that the urban development plans and technical requirement plans bear all relevant information and are publicly available. However, in practice due to early stages of reform and lack of capacity of utility companies, builders still have to visit each authority separately (16 days, 234 EUR).
- Obtain clearance to connect to the telecommunications network.
According to municipal tariffs and fees the cost is calculated based on the total area of warehouse. Anything between 1,000- 3,000 m² is EUR 340. Article 62 of the new Construction Law (2008) stipulates that the utility companies are required to issue any preliminary clearance to provide connection to their services before the design stage. It is assumed that the urban development plans and technical requirement plans bear all relevant information and are publicly available. However, in practice due to early stages of reform and lack of capacity of utility companies, builders still have to visit each authority separately (15 days, 340 EUR).
- Pay compensation for utilities provision on construction land.
The fees are determined according to the following schedule (in EUR per m²): a. ZONE I: ZONE A 152, ZONE B 132, ZONE C 112; b. ZONE II 82; c. ZONE III 50; d. ZONE IV 25; e. ZONE V 50 (where most likely the warehouse would be located). For warehouses, only 50% of the fee is applied. As of March 2009, the

Municipality of Podgorica issued the Decision on Compensation for utilities provision on construction land. The agency to which the amount of 65.28 EUR per m² is paid is: the Agency for Building and Development of Podgorica. The amount is paid in total before submitting the request for occupancy permit. If the payment is made 15 days from the day of the issuance of the building permit, the amount is decreased by 10%. If the investor pays the total amount immediately after signing the agreement with the agency, the amount is decreased by another 10%. There is also the possibility to defer payments for a period of 5 years but interest will be accrued (1 day, 42,452 EUR).

- Obtain ecological approval from the Ministry for Tourism and Environmental Protection (30 days, 7,150 EUR).
- Obtain traffic approval from the municipality (10 days, 3 EUR).
- Obtain fire prevention approval.
Under the Construction Law (2008) the Fire Authority must issue the approval within 6 days. However, in practice it still takes two weeks (15 days, 300 EUR).
- Obtain a building permit from the Ministry of Economic Development.
Under the new Construction Law (2008) the deadline for issuance of construction (building) permit is now set at 15 days. However, in practice due to lack of adequate manpower and technology it still takes 30 days, as before. Ministry of Economic Development is conducting a constant monitoring of the progress and helps applicants whose requests are not replied within time-limit. Applicants can only file a complaint with the local government first, and then if no reaction appeal to the local courts. In practice most companies prefer to wait rather than challenge the authorities. The procedure for issuance of construction (building) permit is simplified. Various approvals and opinions from ministries and utilities companies that were, under the former law, required to be submitted before the issuance of the construction permit are now no longer required. Moreover, the construction permit may be issued based on the preliminary design, whereas the main design and its audit are required before the commencement of construction. This part also includes the review of location permit aspects. However, in practice most of the approvals and opinions are still required before the final decision on construction permit. Building control process during construction has been amended as well. Under the Article 105, companies following the issuance of the building permit must notify the Construction Inspection within 7 days before the actual works begins. The notification can be done via email, provided there is a scanned copy of the building permit. Thereafter the Construction Inspection, which is a national entity, must publish the information on its website, including the schedule of inspections. It is most likely the inspections will take place at the foundation, structural and final stages of construction works. Inspections will not be requested and happen on risk-based approach. Each time the inspector will register the construction site ledger. The Construction Inspection consists of only lawyers which made the process of supervision purely a legal matter (30 days, 715 EUR).
- Obtain water and sewerage connection (10 days, 200 EUR).
- Obtain telephone connection (7 days, 80 EUR).
Request and receive technical inspection for building control from the Ministry of Economic Development The Ministry of Economic Development nominates the members of the inspection panel, which includes experts from architecture,

sewage/water, technical standards, electricity, etc. Additionally, the architects which designed the project must be part of the technical inspection. This came as a result of multiple copyright violations by various builders. The cost is paid for inspection services (1 day, 2,861 EUR).

- Obtain building use permit from the Ministry of Economic Development. All buildings must have a building use permit in order to be able to register with the respective agency. Before, however, buildings could be registered with only a building permit and without a building use permit. The building use permit must be issued within 7 days following the final report by the inspection. However, prior to that, the competent authority has 7 days to decide on the performance of the technical inspection. Thereafter, the inspector has another 7 days to submit the final report. In practice, it still takes around 45-50 days due to various implementation issues (49 days, 1,430 EUR).

According to the interviews with the local experts, the law for issuing construction permits is being under reform and is expected to reduce the required steps in one or two.

According to the interviews with small investors in Podgorica, there is bureaucracy, hypocrisy, malpractice and corruption in the construction permitting. It was recorded that there can be no trust to the state or the municipality as they may any time grab the private land without any compensation, so small investors are not able to plan their investment within a stable and clear environment. High restrictions and detailed inspections are conducted to individual small or medium projects, while big construction companies are allowed to build in excess of the regulations.

Findings

- *The planning procedure and construction permitting is being compiled in two levels (construction permitting responsibility is shared between the central government and the municipalities); in general it is still highly centralized, expensive and inflexible, except some special cases. Planning regulations and land takings usually do not take into consideration the impact caused on private properties' value. Emphasis is given on the "control" of development, production of more maps and plans and numerous on site inspections of all kinds (spatial protection inspection, urban planning inspection, inspection for construction structures, ecological inspection); however the whole approach is expensive and encourages more corruption. A pro-growth approach taking into consideration a number of issues like the economic situation of the citizens, the existing private property rights, the market needs, the lack of personnel and funds may be adopted; general automated procedures and mechanisms may be adopted for the monitoring of the environmentally sensitive areas.*
- *In many cases the current parcel arrangement in the field does not much with the existing plans thus prohibiting building permitting even in areas where DUPs exist.*
- *Empowerment of local authorities and citizen participation can and may be significantly improved.*

- *As of June 2011, the procedure of construction permitting for housing requires several steps and may last approximately one year on average. Montenegro still stands at 173rd in the World Bank ranking of 183 economies on the ease of dealing with construction permits. According to official data collected by the World Bank for the 2012 Doing Business report for Montenegro, dealing with construction permits there requires 17 procedures, takes 267 days and costs 1469.9% of income per capita.*

3.3. Impact of Illegal Development on the Society, the Environment and the Economy

This chapter briefly investigates the social, economic and environmental impact of illegal construction in the country.

3.3.1. Social and Environmental impact

Montenegro is one of the wealthiest countries in Europe in terms of fresh water. However, despite the apparent abundance of water, around 35 % of Montenegrin territory suffers from a chronic lack of water, which can only be solved by means of expensive hydraulic procedures. Around 10 % of the territory has a problem with seasonal surplus water; *there is insufficient provision for drinking water in the coastal region during the tourist season. The uncontrolled use and pollution of water in Montenegro is harmful for its people and the natural environment. Pollution prevention measures must be applied to ensure that water remains clean and human health, animal and plant life are protected* (European Environmental Agency, 2010).

The Electric Power Company of Montenegro is the only company in Montenegro providing electricity generation, distribution and supply. It owns the electricity generating capacities with the total installed capacity of 867 MW, whereof 657 MW (76%) is from hydropower plants and 210 MW (24%) is from thermal power plant “Pljevlja”. The “Energy Policy of Montenegro by 2030” was adopted by the Government on 3 March 2011. The company is partially privatised; it remained 55% ownership of the state.

The Net consumption of consumers is calculated to be 1,998.7GWh, while the unauthorized consumption (illegal connections) is calculated to be 14.7 GWh (Ministry of Economy, 2011). According to information derived from the Strategy 2010 document (MSPE, 2010) a lack of electricity provision is identified in informal settlements of only six municipalities. Figure 19 shows the information about infrastructure provision to the informal settlements (MSPE, 2010) combined with the ethnic structure by municipality.

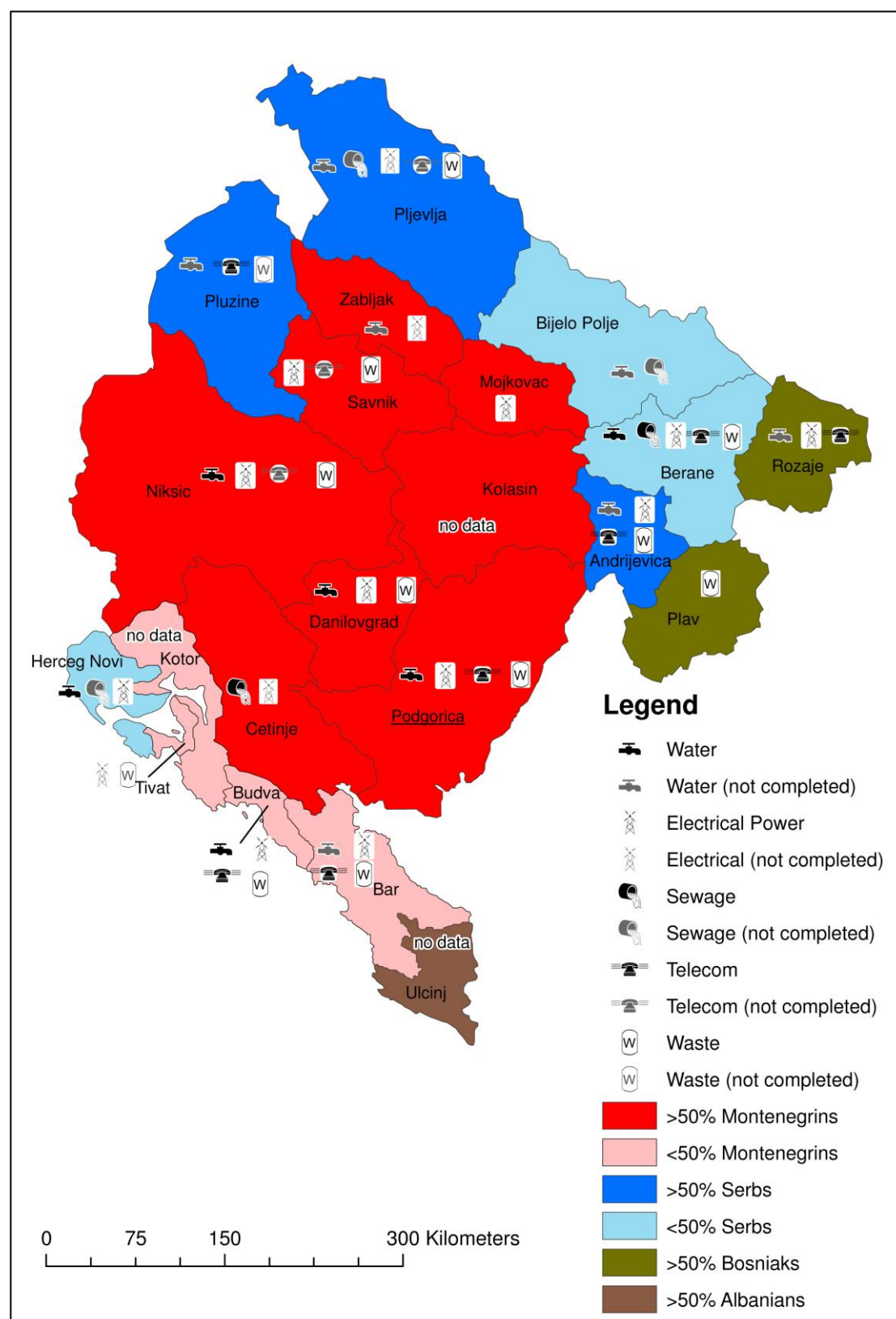


Figure 19. Information about the infrastructure provision in the informal settlements combined with information about the ethnic structure by municipality.

There are significant regional variations in fuel use for heating. 36.4 % of households who use electricity for heating live in the South of Montenegro, 56.1 % in the Central part, and *only 7.5 % in the North*. This is partly determined by the warm winters in the South and the relative abundance of wood in the North; *about 77.8 % of households with income over 275 €/month use electricity for heating while over 70.5 % of low-income households use wood*. The fuel type used for heating is also influenced by the characteristics of the housing type. For example, wood burning stoves are impossible to be used in apartments without chimneys; this condition is more common in Podgorica.

Due to an increased ecological sensitivity in Montenegro, *lack of waste collection is not frequently met in many municipalities today*. The degree of waste collection in the central areas is high, whether it is lowest in the mountainous areas; *waste collection is not provided in informal settlements for eight municipalities* (MSPE, 2010) (Figure 19). Waste producers in such informal settlements dispose the generated waste at non suitable places.

On the 26th of February 2004 Montenegro adopted a National Waste Management Policy which supplements the vision, principles and goals set out in the Environmental Programme as well as in already existing national regulations and standards; *the entire republic has been divided into 8 waste catchment areas* (GOPA, 2004). *Current challenges include the planning for the waste management locations, the resolving of land expropriation issues, and the issuing of permits for the construction of the necessary landfills*.

On the 1st of January 2010 Montenegro adopted a new Law on Waste Management. The new law regulates waste management in compliance with EU standards and directives, in terms of waste sorting, separate waste collection, waste recycling and disposal, in a way that enables adequate sanitary land filling and high level environmental protection. *However, with the exception of Podgorica all other municipalities have certain difficulties to fulfil the necessary preconditions for the full implementation of the new waste management law due to the lack of professional knowledge and funding*. In addition the municipalities are faced with the task to plan the local waste management centres, which shall include landfills as well as waste sorting and recycling points, and to organize a more efficient system for separate waste collection. Therefore the government undertook a series of supporting activities, which include the provision of approximately 1.6 M€ from the state budget and about additional 200,000 € of donor assistance for the development and design of the regional sanitary landfills and for the revision of the finally prepared documents. Further financial support for the construction of the planned sanitary landfills the Montenegro is guaranteed by a 27M€ loan agreement with the European investment bank.

Currently a 54 million € waste management project for the implementation of five inter-municipality sanitary landfills, transfer stations, recycling facilities and the rehabilitation of around 30 dumpsites is under way. *Podgorica has operated for two years a landfill, while the country is finalizing the plans for the construction of four additional landfills* which will provide the basis for tenders from landfill constructors. Three from the four construction plans already contain concrete location spatial plans with the aim to start the construction of the landfills. However, inefficient garbage

collection and dilapidated places are found in the most developed areas, e.g., at the fringe of Podgorica (figure 20) and at the overdeveloped coastal areas.

There are not many maps and diagrams available showing the flood risk in the various municipalities in Montenegro. A lack of GIS expertise is identified in most municipalities. The EU Directive on Flood (2007/60/EC) suggested the development of 3 scenarios (a frequent flood event scenario, an occasional one, and a rare one), which would form the basis for planning and ensure the comparability of the risk profiles. During a Workshop on Local Flood Risk Assessments, which was held in August 2011 (<http://www.gripweb.org/gripweb/?q=node/697>), it was pointed out that hydrological modelling and flooding mapping should be done in a modern and professional manner. Given the frequent occurrence of flash floods, the development of a dynamic hydro-meteorological model in areas with high density informal settlements is necessary. *Frequent flooding in areas with informal settlements may weaken the stability of informal constructions and this will increase the risk of earthquakes.*



Figure 20. Sutomore (top); Roma neighbourhood in Podgorica (bottom).
(photos: author)

Another large challenge in terms of informal settlements in Montenegro is the integration of the poor and refugee minorities into the Montenegrin society.

According to UN reports, Roma are the most marginalized ethnic minority in Montenegro. *Improving the plight of Roma is one of the toughest challenges faced by the country.* The vast majority of Roma are considered unemployable by the vast majority of Montenegrin employers. The 2003 survey estimated that as many as 25% of domicile Roma in Montenegro did not possess sufficient ID to access national programs for health, education, social benefits, social services, employment mediation services, financial assistance and other services. UNDP Montenegro has in the interim fundraised additional resources from the Swedish International Development Cooperation Agency (SIDA) - for the entire documentation process in accordance with the new Montenegrin law on citizenship, which can run as high as 500 to 700 EUR per person and take anywhere from six to eighteen months. According to a 2008 survey made by the Montenegrin national statistics bureau MONSTAT, the Roma National Council and NGO Coalition Ronski Krug, *there are around 11,000 Roma residing in the country, including those displaced from Kosovo.* Local non-governmental organisations estimate that the real number of Roma in Montenegro is between 20,000 and 28,000. Additionally, in Montenegro there are about 8,000 internally displaced persons (IDPs) of Romani ethnicity from Kosovo. The official records put this figure at 6,492 Romani IDPs from Kosovo, and 96 Romani and 16 Egyptian "double refugees" - persons who are refugees from Croatia or Bosnia and Herzegovina, who first fled to Kosovo, and later to Montenegro.

By adopting the Action Plan for Implementation of the Decade of Roma Inclusion 2005-2015 and the Roma Strategy 2008-2012, Montenegro committed itself to the development, promotion and implementation of Roma integration policies in order to improve their position and reach a higher degree of integration and socialization. Still, the RAE (Roma, Ashkali and Egyptians) population in Montenegro faces considerable challenges of social inclusion. Through a number of projects and programs in the area of social inclusion, the United Nations System in Montenegro is committed to provide support to advancement of living conditions for Roma, Ashkali and Egyptians in order to include these marginalized groups into the Montenegrin society.

The UN Agencies in Montenegro have initiated a number of concrete activities for the registration of RAE population, such as: direct and free legal, medical and social assistance to RAE at risk of statelessness, education campaigns for local stakeholders and general public, education campaigns for the RAE population, employment generation schemes, as well as entrepreneurship development.

There are two Roma camps in Podgorica (figure 20 bottom): Konik Camp 1 which contains about 1,400 persons, while Konik Camp 2 contains about 350 people. Konik Camp 1 was constructed as a temporary shelter for Roma IDPs. The camp consists of 43 wooden barracks, some of which are in danger of collapsing at any time. Also there is a very high risk of fire. An average of 8.1 persons lives in 16 m² housing unit. The biggest share of humanitarian assistance is targeted at the camps. However, since the international assistance decreased, assistance has been rather symbolic. For instance, the German NGO Help constructed a building with 22 apartments and has also planned another. Also some other municipalities have large Roma IDP settlements. Due to a lack of municipal assistance and government commitment, the United Nations High Commissioner for Refugees (UNHCR) is forced to deal with these camps on ad hoc basis. The project "Support to the voluntary return to Kosovo" financed by UNHCR Montenegro is part of a comprehensive program of providing

durable solutions to some 3,500 internally displaced members of RAE population currently residing in Montenegro.

3.3.2. *Economic impact*

As mentioned before only 20-30% of the total registered property owners manage to pay property taxes. The economic impact of the not registered informal buildings is large. The registered informal buildings are 39,922. As mentioned before the registered owners are expected to pay reduced annual real property taxes, communal fees and transaction fees than the legal buildings. However, the rest ~90,000 do not pay any property taxes. Moreover, such buildings cannot be mortgaged unless the owner has registered property rights on the land. Most informal settlements are characterized by squatting on state land and lack of paths or paved roads and other infrastructure like sewage networks, public lighting, public transportation, etc, that is provided in the planned areas, but the majority of middle or low income people try to improve their homes (figure 21). Thus, such constructions represent a significant “sleeping” capital.



Figure 21. Informal houses in the unplanned rural areas and in unplanned villages (photos: author)

Problems like the inadequate road networks, inadequate provision of public schools, clinics, cultural and supply facilities are general problems in most of Montenegro and require special treatment.

In general, obligations of payment of required communal fees are not carried out, which ultimately results in insufficient funds in the local budget for construction of additional infrastructural capacities. The lack of parking areas, squares and common use areas, the existence of narrow streets that cannot facilitate garbage collection or car traffic in most cities that have been developed without any planning are also important. These may be addressed by ad hoc measures and policies in which citizens will have an increased involvement, so as to adopt and implement special traffic regulations, purchase land through the market (or apply expropriation practices) for specific purposes of public benefit. That may balance the “non-payment mentality” of taxes and other obligations to the state or the local self-government.

Findings

- *The most significant social and environmental problems of informal settlements and buildings in Montenegro are related to the inadequate utility infrastructure and the inadequate natural disaster risk prevention and management, especially in terms of flooding, forest fires and the following soil/rock slides, and earthquakes.*

- *Around 10 % of the territory has a problem with seasonal surplus water; pollution prevention measures must be applied to ensure that water remains clean and that human health, animal and plant life are protected; A lack of electricity provision is identified in informal settlements of only six municipalities; Waste collection is not provided in informal settlements for eight municipalities; waste producers in such informal settlements dispose the generated waste at not suitable places.*
- *The entire republic has been divided into 8 waste catchment areas ; current challenges include the planning for the waste management locations, the resolving of land expropriation issues, and the issuing of permits for the construction of the necessary landfills; Podgorica operates since two years a landfill, while the country is finalizing the plans for the construction of four other landfills;*
- *Poor occupants of sub-standard illegal slums are socially marginalized by having no access to ownership rights, legality and credit, and they experience high health risks. Roma settlements belong to this category. According to a 2008 survey made by MONSTAT, the Roma National Council and NGO Coalition Romski Krug, there are around 11,000 Roma residing in the country; local non-governmental organisations estimate that the real number is between 20,000 and 28,000. Improving the plight of Roma is one of the toughest challenges faced by the country; international assistance and UN agencies support both the integration to the Montenegrin society and/or the voluntary return of IDP to Kosovo.*
- *The “non-payment” of taxes of all kinds resulted in insufficient funds in the local budget. This shows that either taxes are not affordable or that citizens do not trust the state and the local government. Innovative and increased citizen participation may replace the state in some tasks. Traditional tasks carried out by local governments may be transferred to the citizens.*
- *Most illegal buildings are of comparatively good construction and have connections to some basic services. However, they are not registered in the cadastre and thus there is a significant loss of tax state revenue. Occupants of illegal buildings are deprived of legal ownership rights and thus they have no access to credit or to the real estate market. There is a considerable amount of assets blocked in illegal constructions, as “sleeping capital”, which should be integrated into the real estate market. This situation hinders poverty reduction.*

4. CURRENT TRENDS AND TOOLS FOR ADDRESSING ILLEGAL DEVELOPMENT

This section briefly presents the tools and alternative scenarios used in other countries in the past to address or prevent the problem of illegal development, such as legalization, demolition, spatial and urban planning amendments, neighbourhood upgrading and infrastructure provision, social / affordable housing and pro-poor solutions. Major trends and principles are presented according to current international literature and examples from current legalization tools and practices in four countries in the region are given.

Security of tenure and access to fundamental financial services such as mortgage and credit and fair property taxation are considered to be the basic principles for a free market economy (UN ECE, 2005). Access to land and property rights for all is also considered to be a fundamental human right. Laws should be improved and procedures for implementation simplified towards that direction (Onsrud, 2007).

International literature makes it clear that adopting modern legislation for the procedures and administration of property rights and their secure registration is the most important tool to facilitate the real estate market and enhance economic development (UN ECE, 2005). However, what is essential is to revise the land policies and practices of the previous century, adjudicate and recognize existing rights on land, simplify development procedures and keep tax property and transaction costs low. It is important to provide ownership rights, simplify the building permitting process, solve existing illegalities and overlapping private and state property rights, enhance property registration in areas where illegal development exists, and integrate such areas into the economy in order to activate the “dead capital” and allow access to credit.

Overlapping or unclear ownership rights and unplanned, informal, or illegal development is common in the contact zones, at the urban fringe of most big cities all over the world due to reasons like rapid urbanization, lack of affordable serviced / planned land, poverty and marginalization, or increased market pressure. An “illegal” construction may be a construction built:

- without a building permit,
- in violation of a building permit, or construction regulations,
- in violation of zoning regulations,
- on legally owned land (title of ownership),
- on state owned land,
- on private land, which belongs to some other owner (Potsiou, 2007).

Normally people only choose to occupy illegal housing *where there is no other affordable, reasonable choice*. Illegal development does not always result in slum conditions. The type of illegal buildings varies from single family houses even to 10 multi-story, multi-family houses and they may appear within industrial zones, agricultural lands, forests, coastal zone, as well as within urban areas.

Several tools have been applied for formalization of illegal development and its future elimination (Tsenkova et al, 2009). In case the phenomenon of illegal construction is extended governments have three options to consider: legalization, demolition, or

ignorance (denial of their existence). No politician should ignore this social and economic problem and demolition is an unpopular measure. Therefore, the usual approach is legalization of as many as possible illegal constructions.

Legalization is unpopular among those who do follow the building and land-use regulations, so it is usually accompanied by fees or penalty charges. Illegal development though, as a *major social phenomenon*, indicates a need for system change. Legalization initiatives have been applied in several countries. Legalization where feasible should be a tool to support not only housing needs, but the real estate market and the national economy. Experience from multiple legalization initiatives in the past (e.g., in Italy, Turkey, etc) (Panunzi, 2007; Ozer et al, 2007) shows that each legalization act has in fact encouraged new illegal development in the following years if not accompanied with a system change. However, both technology and policies have changed radically now thus providing the means to eliminate the phenomenon in the future.

It should be emphasized that there is a need for a holistic and consistent approach. Legalization must be accompanied with systematic and consistent application of other land tools like urban upgrading, environmental and infrastructure improvements; resettlement; privatization of rural and urban land and houses to the homeless; affordable housing policies; changes in planning and revision of land-use regulations in order to be flexible according to citizen needs; provision for public participation in decision making for planning and zoning; provision of motives for avoiding further city expansion by increasing urban densities (in addition rural people should be encouraged to earn their living partially through agriculture and partially through other relevant seasonal activities and mixed uses that must be allowed in the rural areas); adoption of measures to increase public and political awareness about the new policies and the benefits of private ownership and its registration to cadastre and the benefits of flexible and affordable planning and citizens participation; and automated environmental monitoring (Potsiou, 2009).

It is worth noticing here that the role of the state is decreasing in favour of the private sector; the interest in planning principles and objectives have gradually changed from “controlling development” towards “facilitating growth aiming to poverty reduction” and from “protecting the environment” towards “developing adaptation and mitigation measures to face the climate change”. Measures and planning principles both for economic growth and for climate change should be compatible, both aiming to sustainable growth. According to UN HABITAT, environmental/climate change measures should also make economic sense (good business opportunity, job creation, economies of scale, etc). In that respect, due to the current global challenges (democratization/privatization, economic globalization, immigration and rapid urbanization, climate change, economic crisis and the need for growth, etc) major reforms are needed. For that, planning becomes more flexible and permitting procedures are simplified, state control and involvement is gradually minimized and replaced by greater citizen involvement and participation of the private sector. On-site inspections by state employees and police measures are no longer considered as most appropriate or successful measures as they cost much and very often increase corruption; instead, citizen stable involvement guarantees the success of the reforms and the progress. Controls and monitoring of rules enforcement, where needed, is preferably achieved by automated methods with minimal human involvement. The

role of local authorities is changing rapidly, too, addressing questions like: *“How do we take the local administration out to the community and bring the community in? How can we determine which traditional tasks of the local administration can be entrusted to the citizen?”*

Prior to operation permitting, illegal buildings of several floors and of commercial use that accommodate large accumulation of people (e.g., hotels, schools, restaurants, state agencies, multi-purpose buildings of private sector, etc) must be judged according to their safety; in defining the legalization zones constructions should also be judged according to their environmental impact. Constructions leading to general environmental burdening, such as buildings in high risk radioactive waste areas, or specific zones of specific natural beauty, land specified for common use, public squares, active river routes, etc should be denied legalization. *However, the extent of such denials should be realistic and may vary according to the local situation and the specific economic conditions.*

Buildings constructed illegally in order to serve a social need for housing should be dealt with differently from those constructed purely for commercial benefit; e.g., illegal constructions built for commercial benefit (not for “need”) that are proven to create serious environmental damage that cannot be recovered through physical improvement and penalty fees may be demolished. Three cases of that type have been demolished in **Italy**. In **Croatia** 1,600 buildings were torn down in the period 2004-2007 (Pahic & Magdic, 2007). However, this is an unusual case in democracies, creating major social and political problems, and is not an example of good practice, and is not recommended. Croatia is working on providing a new legalization law.

When neighbourhood regeneration is needed (in case of sub-standard slums) care should be taken not to create homeless conditions for residents of long standing. Resettlement should be used in parallel to the regeneration project. If necessary, demolition must be applied at an early stage before a construction is finished and occupied. Although unpopular, sporadic demolition for extreme cases may be used as a tool. Procedures must be transparent and must provide for judicial appeal.

Although social housing, meaning that the state will construct and maintain publicly-owned buildings to shelter the poor, is not a universally successful tool in free market economies, there have been some successful initiatives in Europe by public-private partnerships for building and maintenance of social houses.



Figure 22. Social housing in Lisbon (source: Tsenkova et al, 2009)

The social housing programme of **Lisbon** is an example of good practice (figure 22) (Tsenkova et al, 2009).

In other countries affordable housing policies have been adopted instead. The state may build and privatise houses for the poor and / or may involve the private sector in the process, and / or may provide subsidies to loans for first residence or for rents, as is the case in Greece. In **Greece** there is no publicly-owned dwelling stock, neither by central government nor by local government. Instead there is the Workers Housing Organization, a tri-party organization operating under the Ministry of Employment and Social Protection, with its own financial resources. It is financed by contributions from workers and employees of the private sector (1% on salaries) and by the employers (0.75% of their wage bill) (CECODHAS, 2009; Potsiou, 2010). Recently, the Greek government has proposed to close down this organization, due to reforms to face the economic crisis.

Some other approaches are applied in the **USA**. Local government has the control of land-uses including citizen participation. Through this procedure they encourage housing opportunity for people of low and moderate income by creative, flexible, and innovative land-use regulations; e.g., permitting the development of greater density of buildings of identical quality while requiring a specific percentage of housing for buyers of low or moderate income (Foster, 2007).

Zoning and planning systems vary in various countries and are interrelated with politics, economy and efficiency of systems. There is a need to review the laws and legal regulations seeking to adopt more realistic restrictions and systems according to the local conditions. In **Germany**, construction in unplanned land is forbidden. The municipalities provide urbanized land (planned and serviced) frequently, as needed. Planning authorities use the cadastral maps to compile the detailed urban plans and citizens contribute the necessary land (in order to convert unplanned parcels to urban plots and create the necessary space for common use) and money (a significant percentage of the costs) for the improvements. When the procedure of *land re-adjustment* has been completed, the new cadastral maps are sent back to the cadastral agency. However, this is an expensive procedure that many countries cannot afford to adopt; even in Germany it may last for several years and may be delayed due to objections.

The **Greek** urbanization procedure, shown in figure 23, is similar to the German. However in Greece, due to lack of necessary funds and detailed spatial data (e.g., cadastral surveys, hydrological and geological studies, forest maps, archaeological maps, etc) and due to the fact that in the areas under planning formal and informal constructions already exist, the urbanization process needs extensive time and money to be completed; for an area of similar size the procedure in Greece may last even 5 times longer than in Germany. In order to unblock development, construction in Greece is permitted under certain strict regulations in the unplanned areas as well, but only if all the necessary documents (ownership rights, certificates from about 20 agencies in terms of forests, archaeological sites, etc) are submitted for a building permit. This is a long and complicated procedure, but still it does provide an opportunity for development.

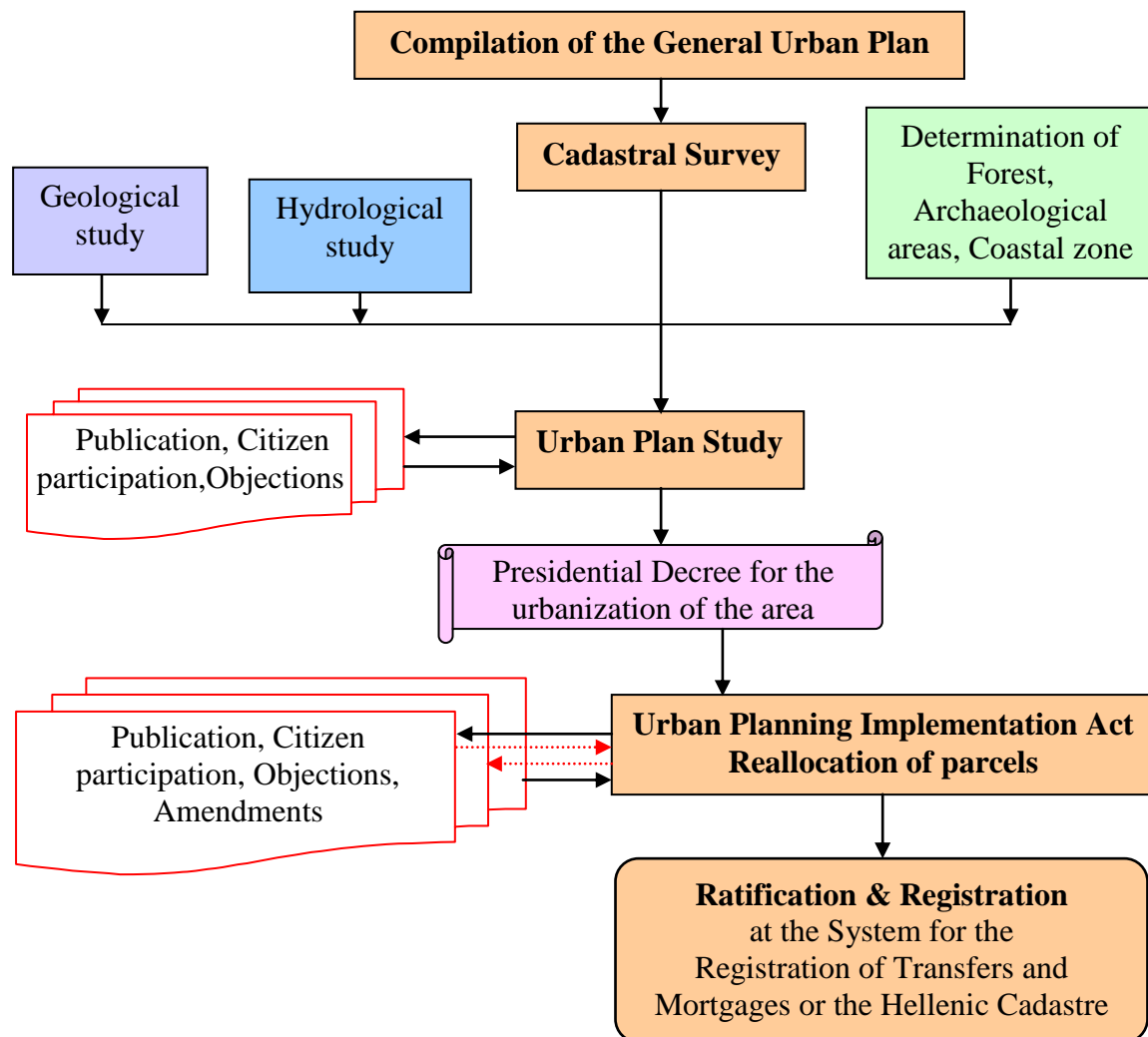


Figure 23. Example of the procedure followed for the provision of new urban land (for the conversion from privately-owned rural land to privately-owned urban land owners must contribute land and money, thus a reallocation of parcels is needed)

In **Spain** also planning is not always provided in advance of market need, despite the fact that a modern cadastral system is already in place (and is now available via Google). In order to shorten the procedures for issuing building permits (with a purpose to create a more favourable environment for investment) Spain has adopted a flexible permitting procedure; a permit may be obtained either by an express act or by failure of the authority to act, which is tantamount to permission. Preliminary permits are obtained from the city council allowing the building to be classified as legal, and it will only be through *a posteriori* control that a solution can be found. When edification has been done without a permit or in infringement of the permit that has been given, *a posteriori* “legalization” is possible. For that, a legalization proceeding must be pursued on the basis of a project and with compliance with the same requirements as in the case of a permit. Legalization will be carried out whenever possible, even if there is only partial legalization. The edification’s registrability will at all events be predicated upon legalization (Gonzalez, 2007; Potsiou et al, 2009) (figure 24).

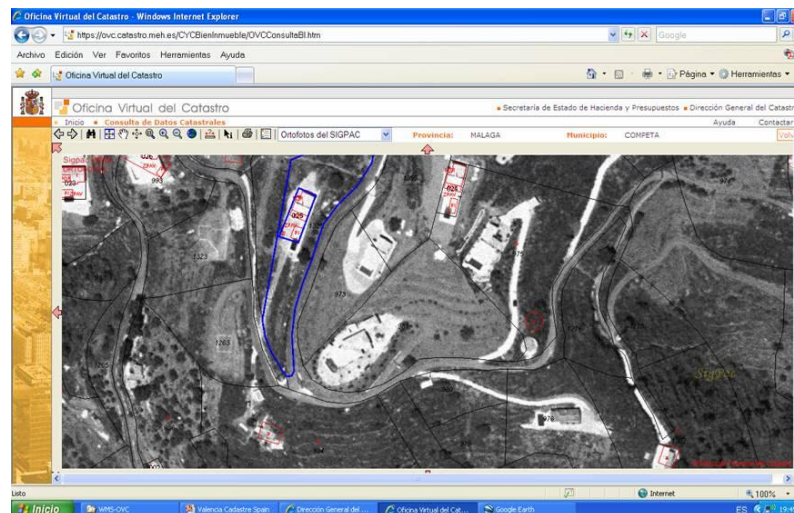


Figure 24. Unplanned, informal construction in agricultural land in Axarquía, Málaga

On-site inspections of constructions are costly. Corruption often results from inadequate civil service salaries, complex procedures and legislation. It is only through adopting integrated solutions that acceptable results of illegal development interventions can be achieved. Cadastre and spatial planning are fundamental tools and they should be used in coordination with each other. Automated photogrammetric methods may be applied instead of field inspections for identification of new illegal constructions (Ioannidis et al, 2009). Recently, automated photogrammetric methods are in practice applied in Italy for identification of illegal constructions.

Some major fundamental principles adopted internationally for addressing illegal constructions may be summarized as following:

- *Any tool (legalization, resettlement, demolition, upgrading, integration into spatial and urban plans and land reallocation, etc) used to improve the existing situation in areas with illegal development should not create homeless people ;*
- *People should not be deprived of land ;*
- *Access to ownership rights should be made affordable, procedures must be simplified;*
- *“Dead capital” invested in illegal constructions should be activated for the benefit of the economy of the country. By Hernando de Soto’s calculations, the total value of the real estate held but not legally owned by the poor of the Third World and former communist nations is at least \$9.3 trillion. This amount is about 46 times as much as the World Bank loans of the past three decades, and more than 20 times the total direct foreign investment into all Third World and former communist countries in the period 1989-1999;*
- *Legalization should include as many illegal constructions as possible, not only those serving housing need, and not only those whose owners can afford to pay; Legalization procedure should be clear, cheap and attractive to all;*
- *Legalization should be accompanied with environmental improvements and with measures to avoid illegal construction in the future such as affordable and flexible planning and building permitting to facilitate growth;*

- *Any demolition of illegal construction should be applied exceptionally, only in extreme cases with proven environmental impact that cannot be recovered by other means, always at an early stage of the construction (before occupation), using transparent procedures, providing for judicial appeals;*
- *Automated monitoring methods, using modern photogrammetric techniques, should gradually be applied. Automation may eliminate human involvement in the inspection procedure and onsite inspections that encourage corruption may be minimized;*
- *International experience shows that upgrading the Roma illegal settlements is the most difficult challenge to deal with. Several policies have been applied in various countries like housing loans, social housing, etc. Such policies must be accompanied by other strict measures like formal registration of people and their families at the municipality records, obligatory school education, etc.*

For the purposes of this study an in-depth, up-dated and original research was made in four countries (Albania, FY Republic of Macedonia, Greece and Cyprus) in the region which face similar problems of informal development and have initiated legalization projects recently.

4.1 The case of Albania

Expedited and extensive legalization, and provision of ownership rights, is being currently applied in **Albania**, an example of good practice. Albanian government decided to legalize quickly most informalities; the aim was to avoid criticism from opposition parties, and to quickly stimulate economic growth. Albania's economy has finally outperformed other countries in the region. Complicated planning and detailed land-use regulations in combination with inefficiency of land administration agencies would have significantly slowed down economic development, if enforced by government. The government has in parallel worked on the compilation of the Urban Law.

Most of agricultural and all urban land has been privatised. The Albanian government was unable to provide social or affordable housing for low and middle-income families, due to privatization of all State-owned real estate property and lack of regulations for the private sector in housing. After transition, due to rapid urbanization there was a considerable amount of illegal occupation of both private or state land and illegal construction around big cities in Albania. Citizens relocated in search of better living and working opportunities and built informally. The government admitted that informal development was the only way for the average Albanian to acquire better housing, or even a second house. Building through existing formal procedures normally means waiting for several months with unknown results. Allowing informal building procedures, legalization of squatting, and ownership rights provision for informal houses was chosen as the best approach to address service provision, improve the image of the state and stimulate the economy of Albania. This approach also provided a motive to emigrants to bring their savings back into the country. The Albanian labour force has invested capital to improve their living situation. Most of the housing in Albania has been built by skilled workers. This significant amount of capital invested, if not legalized, would have remained a "sleeping" capital, not been taxed, transferred or mortgaged.

In dealing with the problems in 2006, the government has adopted *simplified legalization procedure* of informal buildings. The authorities have identified the General Adjustment Plans which set the line of urban construction (the “yellow line”). Within this boundary urban infrastructure systems will be expanded to allow the construction of housing, trade, service and industrial facilities during a 15-year period. The plan also sets the suburban line further out on the periphery of the city. Informal development within the yellow lines can be legalized and become urban area. 127 new planning zones (*legalization zones over 5 hectares each*) all over the country have been created on orthophotos to encompass 300,000 properties, within which by a *self-declaration* procedure and a field survey accomplished by a state agency, ownership of illegal buildings, of any use type, up to 4 floors and the land can be acquired (FIG/UN HABITAT/GLTN, 2008) (figure 25). According to the law, a 6-month period was given for Albanian citizens to declare their informal homes. Approximately 350,000 declarations were submitted, out of which 80,000 were multiple-dwellings, apartments and shops. Applicants pay a symbolic amount for obtaining ownership of a parcel of 300 m². If they wish to have more land they can buy it, if available, according to the market values (for parcels up to 100 m² within the yellow lines the selling price is 200 thousand leke; for up to 200 m² 300 thousand leke; for up to 300 m² 400 thousand leke; for over 300 m² the market value). Also, if they wish to declare more than one informal building they can choose for which subject they will benefit property transfer and legalization with the special tariffs. As for *safety control for residential buildings up to 4 floors, the applicant should sign a personal declaration that he/she is responsible for any consequence that may come from natural causes and/or the use of the residential building; the state is not responsible for compensation in case of accidents because of the quality of works in the building.*



Figure 25. Illegal buildings in Albania (photos: author; Andoni, 2007)

Previous owners are compensated. Through easy legalization those Albanians working in Italy and Greece are attracted to bring their earnings back into the country and invest there since there is no substantial property taxation. Government aimed to finish the legalization phase quickly and provide the necessary infrastructure improvements (like fresh water and electricity) with “*minimum urban planning norms and standards*”, in order to solve the urgent housing and economic needs for the first 20-30 years after the political transition to a market based economy and activate the real estate market.

Detailed planning regulations were not updated at that stage to meet current needs. Provision of land for public purposes must be negotiated with land owners on a “quid pro quo” basis whereby land owners contribute land for some value. The value received may be infrastructure, such as water supply, sewer service, electricity, gas, or it may be the right to develop the land. The new Albanian planning approach does not include detailed dimensional requirements for parcels. It creates a legal “*development right*” for all parcels except when individual parcels are too small or odd-shaped to accommodate a typical building. Detailed planning regulations are usually proposed by those interested to invest and develop; they refer to the specific area and are adopted by the authorities as a document of technical character and not as a legislative one that may be broadly applied. By decision, *detailed planning in the informal settlements will be provided at a later stage*, due to the high expense (Andoni, 2007; Tsenkova et al 2009; FIG/UN-HABITAT/GLTN, 2008). Government in Albania decided to address the upgrading situation incrementally; planning principles will anyway be revised after a 20-30 year period.

A special state agency (ALUIZNI- Agency for Legalization and Urbanization for Informal Zones Integration) has been established in 2006 to carry out the legalization project. Legalization aims to activate about 6-8 billion USD of “*sleeping capital*” to the formal market. ALUIZNI has cooperated with the organization for Security and Co-operation in Europe, the World Bank and USA academic centres in this project. The budget for the project was 5 M EUR in total.

Lessons learnt from Albania include the following:

- *Extra-legal informal developments should be legalised using an approach that involves self-declaration.*
- *An appropriate, flexible and simplified legal framework must be established to support informal development formalization in an inclusive manner to allow full transparency for the citizen and increase public trust; make it affordable.*
- *Designate areas for development where informal construction can be legalised and future construction can be permitted, and unblock markets by relaxing some standards -for example the minimum site sizes- adopt minimum urban norms and standards.*
- *Give priority to land privatization and property registration, unblock registration, mortgage and transaction procedures, relax real property taxation. Minimize on site inspections and make legalization quick.*
- *Establish a dedicated agency for regularization of informal settlements.*

4.2 The case of Greece

Informalities in **Greece** are mainly related to an excess of zoning, planning and building regulations, or construction without permission, and not to squatting or a lack of ownership rights (Potsiou & Dimitriadi, 2008). Informal development mainly includes construction of 1-2 storey single family houses in unplanned areas (Potsiou & Ioannidis, 2006), or 1-2 room extensions beyond legal constructions. Approximately one fifth (or more than 1,000,000) of the constructions are informal (without a building permit), not including those with slight informalities, like building-up in semi-open spaces, change of uses, extra rooms (Dimopoulou & Zentelis, 2007) which are estimated to be another 1.5 million. In fact, the great majority of constructions built since the 1980s have such slight informalities.

Basic infrastructure such as fresh water, electricity, telecommunication and roads, have been provided in many unplanned areas because local authorities try to upgrade the neighbourhoods periodically. Greek people resort to informal construction when there is no other realistic and affordable choice available that satisfies their needs. A 2009 opinion poll, commissioned by the Technical Chamber of Greece for the purposes of the FIG/UN HABITAT/GLTN/TEE 2010 study, shows that 40% of respondents have difficulties in paying their housing loans (Potsiou, 2010). About 50% of Greeks polled consider informal development as the only solution to their housing needs. It should be noticed here that these figures refer mainly to the situation as it was before the current economic crisis in Greece, which had only started in October 2009.

Planning principles in Greece are not keeping up with national and international social and economic changes. The existing spatial and urban planning legislation is comprehensive but very complex (over 25,000 pages of legislation), focusing on the control of development and protection of the environment and the public and state lands. This is not easily interpreted either by professionals, or by citizens. Urban planning is totally centralised and expensive. Planning studies at an average take more than 15 years and cost higher than 6,000 € per hectare. In an effort to facilitate market demand for housing, construction was allowed in the non-planned areas, but obtaining building permits requires involvement of more than 25 land related agencies, may take several years, and in many cases requires court decisions (Potsiou & Dimitriadi, 2008). The planning process runs at a different speed to market needs and cannot accommodate short term needs when there are large demands. Planning criteria usually do not include local market interests. Certain parameters make planning a complicated, expensive and time-consuming task, such as the lack of necessary spatial data infrastructure (e.g. cadastral maps, forest maps) and the fact that the areas under planning already include formal or informal developments. Planned towns are constrained and have limited space for further development. For that reason real estate values are extremely high for condominiums in the planned areas (even within the blue collar areas) while salaries remain low.

The Greek Constitution gives priority to environmental and social issues, rather than economic development needs (Potsiou & Basiouka, 2012). More than 50% of the country is protected land. However, the state cannot respond well with its resources for management. This policy restricts serious investment and impacts the economic

development of the country. The statutory environmental constraints are not clearly defined and not delineated on maps.

In 1983 a legalization effort was initiated but it was never completed. Until 2008, legalization of informal constructions could only take place after neighbourhood upgrading through integration into urban regeneration projects and provision of infrastructure improvements. That in practice is a time consuming story that required several decades.

Unlike the Albanian approach, Greek governments never wanted to discuss economic growth and did not want to legalize informal development. Only in 2008, in an effort to improve real estate market due to EU harmonization framework, the government started investigating procedures to legalize the planning and building violations (permit exceeds) that exist in the planned areas (like the build-up of semi-open areas of the buildings). In September 2009 a new law was adopted to serve this purpose which however aimed to legalize only the informalities that exist within the ratified legal outline of the volume of the building (figure 26 right). This meant that any excess in the height of the building (figure 26 left) or constructions that exceed the legal horizontal coverage could not be legalized by that law. By this law, legalization act was considered to be permanent and was supposed to end up with a new property title in which the correct area size of the property would be written. By tradition, the political opposition (socialist and communist parties, etc) claimed that this law was against the Greek Constitution, as by legalizing the extra built-up area there would be an increase of the area/floor ratio and thus an increase of the urban density of the city and according to the existing Greek case law any increase of urban density is supposed to have a negative impact on the environment and is not permitted according to the Greek Constitution.

However, this old fashioned approach in Greece is contrary to the current global strategies for the adaptation and mitigation measures for climate change and environmental protection, which mainly encourage an increase of urban densities; e.g., *“we need to take immediate actions to make our cities more sustainable by revising our land-use plans, our transport modalities, and our building designs... to reduce traffic congestion, improve air and water quality, and reduce our ecological footprint. In that respect urban density is a key factor ... because less energy is needed to heat, light, cool and fuel buildings in a compact city where most of the population commutes by public transit”* (El Sioufi, 2010).



Figure 26. Illegal room under the roof of the building (left); build-up semi-open areas within the ratified outline of the volume of the building (right).

(source: Dimopoulou & Zentelis, 2007)

Following the October 2009 national elections, simultaneously with the beginning of the economic crisis in Greece, Law 3843/2010 was prepared by the new government and was adopted by the Greek parliament with the purpose to formalize only for a period of 40 years (not legalize), the violations that exist within the ratified outline of the volume of the building (figure 26 right). By Law 3843/2010 the “Special Fund for Implementation of Zoning and Urban Plans” was renamed into “Green Fund” and the revenue of this fund was planned to be used for environmental and regeneration projects.

During 2010 and until September 2011 declaration submission of the above informalities was in fact optional and practically meaningless for the owners, as transactions and mortgages of properties in the planned areas with such minor informalities have always been permitted as there was no specific relevant legal binding instrument in place.

In September 2011, under the pressure of the economic crisis, Law 4014/2011 was adopted by the Greek parliament. The Law was supported by the majority of the members of the parliament of the two largest political parties. By this law, in an effort to make the submission of declaration of informalities within the planned areas obligatory government has decided that for any future property transaction (formal or informal) a declaration of the owner and a recent certificate signed by a private engineer is required certifying that there is no informality in the real estate at the time of transaction.

This measure, though well accepted by the engineers means that transaction costs for any property are increased significantly regardless whether the property is legal or not, as the certificate is necessary before any transaction, and generally the transaction procedure is becoming even more bureaucratic. This is contrary to global strategies for the economy and the real estate markets that require a reduction of the required time and costs for the property transactions (World Bank, 2011). Recently, the relevant minister has clarified that this certificate is not required in case of mortgages.



Figure 27. Informalities in the planned areas that do not exist within the ratified outline of the volume of the building, but can be formalized by Law 4014/2011

Law 4014/2011 also allows the formalization of planning and building informalities, only for a period of 30 years, of constructions which exist either within the planned areas (but are not within the volume of the building (figure 26 left, figure 27) or within the non-planned areas and lie on legally owned parcels (figure 28) that are not within the “protected areas”. Within the 30 year period that those properties will be

formalized in the non-planned areas, local authorities are expected to proceed with the compilation and implementation of the necessary city plans, otherwise owners of such properties will be asked to pay extremely high penalties in order to “buy” the necessary land and formalize again. For the region of Attika, for example, in order to build legally in the non-planned areas one needs a parcel of area size at least 2 ha, while the average parcel where such informal properties are built is 300-500 m². Occupants of informal houses in the region remember the 1982 failure in legalization, they understand that detailed planning is not easy to be provided in all areas within the next 30 years, as the country is in extreme recession, and they wonder how many times they will be asked to legalize their homes.



Figure 28. Informal settlements in the non-planned areas in Keratea, Greece

According to this law, for the next 30 years owners of these properties will not be asked to pay any additional formalization penalties for the illegalities that will declare now; connections with utilities will be provided (to those few that are still denied); and transactions will be permitted when the owner will pay all legalization fees in advance and receive the relevant certificate of formalization. Formalization fees are high but scalable depending on the year of construction, the zone value, and whether the property serves as first residence or not, and can be paid in instalments within the next 2.5 years. However, owners must hire engineers for the preparation of the necessary plans and documents. Surveyors should prepare high accuracy surveying plans and civil engineers should inspect the construction's stability on site and submit a standardized report on the construction's seismic vulnerability, as Greece is also a high risk area in terms of earthquakes.

Due to the crisis, by a revision of the draft law, 95% of the revenue of the “Green Fund” (such as the revenue derived from the formalization fees of build-up on semi-open areas, the informal buildings, the trade of emission rights and the environmental penalties) will be directed to the regular national budget.

The unfortunate situation in Greece is that this new legislation is not accompanied with any reform of the planning system and procedures. Thus, both Law 3843/2010 and Law 4014/2011 have inherited the weaknesses of the Greek planning system (in terms e.g., complexity, confusion, bureaucracy) and instead of solving the problem in the informal areas new costs, mistrust and bureaucracy are added. In addition formalization procedure is insecure, costly and long and with the current economic situation the success of this formalization project is questionable.

Investigation of the first statistics and the opinions of those involved in the project are of significant interest. There are approximately 1.5 million small informalities in total within the planned areas; until recently only 655,000 declarations have been submitted for formalization according to Law 3843/2010. According to the Ministry, most declarations have been submitted in Athens, Eastern Attika, Thessaloniki, Creta, Evia, islands of Dodecanese, and Cyclades. The formalization fees for this project are estimated to be from **0.4-2.85 of the tax value**. The revenue until today is approximately 190 M EUR, while the originally expected revenue from formalization of the build-up on semi-open areas of the buildings was 800 M EUR.

Interviewed owners of properties in the above category feel that they are forced to pay large amounts of money for formalization fees on top of all the other taxes the government enforces on real properties; they are willing to participate but unable to pay; the situation becomes absolutely unrealistic especially when existing housing loans, all new taxes and formalization fees must be paid simultaneously, within the same year.

The government extended the deadline for declaration submissions for one more month hoping to collect more declarations and formalization fees.

Formalization by Law 4014/2011 has started in September 2011 and was supposed to finish by the end of November 2011. This law refers to more than one million buildings mainly located in the non-planned areas all over Greece. However, by the end of October 2011 only 30,000 declarations have been submitted, which so far has brought revenue of only 6 million EUR. Greek government had announced a very optimistic estimation that this formalization project would bring about 600-700 million € revenue by the end of 2011. A rough analysis of the declared informal buildings shows that the majority of those declared are commercial constructions and a few expensive informal residences. This suggests that so far only the wealthy owners declare their informal properties. The majority of the Greek owners of informal buildings cannot afford to pay fees due to severe salary reductions, increased prices, and increased income and property taxes. Many wonder “what will then happen to the middle and low income owners of such informal houses who cannot afford to pay?” “What will happen to those informal settlements that exist on land claimed by the state?” “What will happen to the vulnerable groups, like some Roma (Potsiou & Dimopoulou, 2011), and to some minorities who do not even have formal legal rights on land?” This legislation does not have an inclusive character.

In addition, the governmental decision that directs 95% of the revenue of the “Green Fund” to the regular national budget instead of using this revenue to fund environmental improvements introduced a new high risk to the formalization project. According to the Greek case law this could be against the Greek Constitution and the whole project maybe locked at the Greek courts. Owners are aware of that risk; they understand that even if they declare the informality and even if they pay the formalization fees they may still be unable to formalize the property. It is obvious that even if everything goes well they will be reluctant to invest and improve these properties for the next 30 years. However, the responsible Minister of Environment, Energy and Climate Change has tried to comfort people by ensuring them that “*the Council of the State (Highest Court) understands the priorities of the country*”.

Interviews with local authorities in areas with informal development gave positive results; local authorities have long been struggling to upgrade the informal settlements and integrate them into the city plans. However, it is unclear how they will manage to find the necessary funds for the necessary future planning. Planning procedures need to be revised and property taxation revenue should be directed to local authorities to enable them to meet the needs.

Involved experts like surveyors/engineers are supportive as this project creates new jobs for them. Much of the responsibility for the implementation of planning rules and regulations is now transferred to the private engineers. Engineers are asked to make a visual quality evaluation of the construction and to fill out and sign a standardized form about the stability of the building. The educational centre of the Technical Chamber of Greece has organized e-training courses to improve the engineers' professional capacity in this field and to emphasize the importance of the professional ethics. The Ethic Code for engineers is referred to those involved in this project; as the Ethic Code now replaces the state supervision and operates like a social contract between the individual professionals, the professional unions, the clients and the society the TCG is currently working on the Code's revision. Engineers are asked to avoid unethical or unfair competition; they are reminded that any abuse of a dominant position is prohibited; they must inform the owners in a simple and understandable language; and they should also publish and share their knowledge and experience in order to improve the general capacity of the professional body.

Other local professionals, like constructors and real estate agents, have been interviewed, too. Most of the local constructors have been informally acting as real estate agents as well. The majority of them are against the formalization law; they are anxious to sell the semi-legal constructions they have under construction as fast as possible fearing a decrease in value. As construction is long restricted in the non-planned areas and informal houses cannot be legally transferred, so far the semi-legal constructions they manage to build are few and are very expensive and profitable. Probably, through formalization, a great number of properties may become available in the formal market, which will increase the supply and values are expected to fall.

In general the real estate market is heavily affected by the economic crisis in Greece. Local real estate agents declared that the market in informal areas is practically frozen since 30 years ago and in cases where there was a sporadic transaction owners were in need and were always prepared to sell less than half of the "real value". With Greeks facing the economic crisis today only foreigners may be possible buyers in the Greek real estate markets; as is happening in the areas close to the sea.

Finally, it was interesting to hear the view of some foreigners, potential buyers interested in buying single houses in the suburban coastal areas in Greece. In such areas a number of informal vacation houses exist, which by the formalization will be available for sale. The high formalization fees and the 30 years formalization duration is considered to be a great weakness however.

Their views can be summarized in the following statement made by a well-informed foreigner for the purposes of this research: *"The sale of "protection" services has a long history in the major cities in the United States. A store or restaurant owner is approached by the neighborhood boss of thugs and advised that without his*

protection the security of the enterprise cannot be guaranteed. Doubt on the part of the store-owner is dissuaded when his windows are blown out the next day. Protection will cost the proprietor a percentage of his gross (not net) income. It is extortion in its simplest form. Accordingly, I was astonished to read of the proposal of the Greek government to charge certain homeowners a fee (tax? penalty?) for protection against the demolition of their houses for the next 30 years. It is extortion of a higher order.

The condition of "informal development", i.e., the construction of buildings without building permits, or construction in otherwise banned areas such as a forest or coastal zone, is a recognized problem in Greece, the Balkans, Eastern Europe and in fact everywhere, in virtually every country (including Western Europe or U.S.). People circumvent bureaucracy and inconvenient public policy by taking the issue into their own hands to create their own housing. Much of this construction is of good quality, acceptable as to sanitation and safety requirements. It is also unrecorded in the local cadaster and is off the property tax rolls, cannot be mortgaged and carries the threat of public prosecution. The UN and the EU, as well as other organizations continue to study the problem; solutions include everything from demolition of substandard or environmentally inappropriate construction to penalties and fees for final recognition and legalization. The Greek proposal is an example of this latter approach - except that what is offered to the homeowner, at significant cost, is protection for only a limited period. Telling a family that their home is safe for now, but may be reconsidered for demolition 30 years hence - or for a new round of fees - is clear extortion-by-government."

Lessons learnt from Greece include the following:

- *Centralized, complicated and expensive planning procedures encourage further informal development; Constitutional environmental restrictions and complicated regulations put the brakes on economic growth.*
- *There is a need for a clear government policy and collective will among all stakeholders for legalization of informal development; formalization for a limited period creates public mistrust and blocks the market and the economy.*
- *Local and international real estate markets require, among other things, security of tenure and clear regulations and policies. Long existing private rights on land (formal or informal) should be recognized.*
- *Expensive and unclear procedures, plethora of legalization laws, detailed on-site controls and high penalties minimize the expected economic and social benefits of legalization.*

4.3 The case of the FY Republic of Macedonia

Illegal construction mainly around the city of Skopje had started before the establishment of the new state. During the socialist period, government, international and local planners tried to enforce a modern city model in Skopje after a couple of natural disasters. In 1962, a major overflow of the Vardar river destroyed most of the buildings' foundations in Skopje; in addition to that, the 6.9 Richter scale earthquake, on July 26th, in 1963, reduced the entire city of Skopje to ruins and left about 80,000 homeless plus 70,000 more living in heavily damaged buildings. The existing housing

stock was assessed to have lost 65% of its technical value and only 1 in 40 dwellings remained appropriate for occupation.

Due to the inefficiency of the social housing and rural policy many rural families in the greater area of the 10 larger cities ended up growing their own food on their rural parcels in the unplanned areas, of which the “right of use” (but not an “ownership right”) had been issued to them; they also managed to build houses for their own use. Such houses, until recently, were considered to be illegal, since they were built all over the country in non-construction, agricultural land of which occupants may have only the land-use and no ownership rights.

During the socialist period citizens had no involvement in the decision-making procedures for the major restructuring project of Skopje. As all land was under state control the planners, focused on serving the purposes of the government, did not seriously consider people’s individual preferences, existing ownership rights, market land values, or any future market needs; the state concentrated on the post- natural disaster reforms with the criteria of low-cost and maximum number of dwellings. As a result, many people were reluctant to be moved into the new apartments built by the state and be separated from their communities, so they preferred to build or repair their own houses at their own expense, informally, contrary to what planners and government had intended. It is estimated that by 1981, about 160,000 citizens lived in such self-made houses.

The social and civil stability of the country was seriously affected by the Kosovo crisis of 1999, during which FYROM received around 300,000 refugees. The crisis and the war had a direct impact on the housing sector. Many people were displaced, and many settlements were destroyed. This resulted in a comparatively high concentration of population in the cities (according to the 2007 World Bank statistics 66% of the population has become urban), and increased urban poverty and rapid expansion of illegal settlements mainly in Skopje and in the 10 larger cities. Part of the population solved its housing needs through illegal building on state-owned land, often substandard constructions in the non-construction areas of the towns. Since the average family could not afford a new home, many families lived with their parents making overcrowding the primary issue of poor living conditions.

Since 2004 (when the new law for spatial planning was adopted), once the urban plan of the settlement was in place, people (those who have gone through the process to convert land-use rights into ownership rights) could legalize their illegally built houses.

Currently, according to the new Law on Spatial and Urban Planning of 2004, spatial development in the country is regulated by the Spatial Plan, which consists of the:

- Regional Spatial Plans,
- Areas of Special Interest Spatial Plans (there are about 12-14 specific plans of that kind),
- Spatial Plans for the City of Skopje (GUP and detailed urban plans)
- Municipal Spatial Plans (GUP) and the detailed urban plans for the larger cities,
- urban plans for villages from 100 up to 500 people, and
- urban plans for smaller settlements.

Current spatial planning is more flexible than its previous version and in many cases responds to the market needs (when citizens are willing to undertake the costs).

Development within construction but unplanned land is made possible after an application of several citizens and an agreement with the municipal council about the costs for extensions of basic infrastructure and connections. If citizens are willing to undertake much of the costs, extensions of detailed urban plans are easy. Property taxes are by law added to the municipalities' revenues and this fact makes extensions of detailed urban plans easier. However, there were several cases where the citizens could not afford to undertake the costs for planning and building permits and for connections to basic infrastructure, so they followed extra-legal ways (e.g., illegal construction in unplanned areas and illegal connections to basic infrastructure).

Development in non-construction land or in areas outside the GUPs can be regulated by individual plans prepared for the specific development for production facilities only. According to this law the Ministry for Spatial Planning is responsible for setting the conditions for the spatial planning. All Municipalities and the city of Skopje have proposed to the Ministry of Transport and Communication the necessary amendments for their GUPs (or they introduced GUPs, where there were none), according to the Spatial Plan, but this is a lengthy and costly procedure. However, the existing old detailed urban plans did not consider important aspects like land tenure issues – whether it is state-owned, private, or land subject to denationalization. This, together with the complexity of the situation on land rights, creates difficulties to land development and to the real estate market functioning (GfK-Skopje, 2008).

The *Law for Spatial and Urban Planning*, although flexible, strictly separates urban areas from rural areas. It disallows mixed uses (e.g., combined production and residential uses) in agricultural areas. In addition, urban areas and rural areas are administratively separated and belong under the responsibility of different ministries (the Ministry of Transport and Communication and the Ministry of Agriculture, Forestry and Water Economy).

There is a complicated administrative structure with sometimes unclear responsibilities in terms of illegal buildings, creating problems in the real estate market. Unclear land tenure (lack of ownership rights) was the most important problem of illegal buildings, and this needed to be solved.

The formal construction sector faces serious problems, too. The average age of buildings in the region is about 30 years; due to poor maintenance, most are in need of immediate reconstruction / renovation. In the period 1990-2002 about 17% of the currently existing buildings were constructed. Condominium dwellers add new illegal extensions to the existing buildings e.g., build-up balconies, added extra floors, staircases, etc, mainly due to lack of awareness of regulations, and/or because of a need for bigger apartments. This affects the legal status of condominiums, the physical condition and the safety of the buildings, the value of real estates, and the real estate market in general.



Figure 29. Unfinished constructions (left); exceeds in building permits (right)

New constructions face serious problems as well. Constructors lack professional ethics and reliability. It is a common practice that developers start large constructions of good quality before they obtain building permits because they do not submit all necessary documentation for the construction in advance; however many of them manage to bring all the documents during construction and thus they can legalize the buildings afterwards. Recently some constructors had double-sold apartments to multiple buyers in Skopje. Also, in several cases once the constructors manage to sell all the apartments in a building, they leave the building unfinished and begin a new construction, leaving the owners of the first building to finish their apartments alone (figure 29). There are several buildings in Skopje and other cities with unfinished facades that are already occupied by the owners.

As a motive to accelerate development, and also as a pro-poor measure to achieve economies of scale, authorities in Skopje, in 2009, have decided to enforce minimum required building heights 25m for parcels up to 500 m², and 30 m for larger parcels. As maintenance of buildings is poor, there are concerns that communication and agreement among so many apartment owners will be difficult and the buildings quality will deteriorate quickly.

Inspection of construction and enforcement of regulations is still weak. There are no reliable statistics available. For this reason illegal construction is accomplished not only by the poor or average income people, but also by constructors or the wealthy for commercial profit. Illegal construction is not only accomplished for housing purposes (first residence or weekend houses) but for business as well. Some building demolitions have been carried out mainly related to squatting on private land.

Unclear responsibilities, or political differences, in the municipalities of Skopje often lead to conflicts among the Mayor of Skopje and the 10 other mayors of the local municipalities of Skopje. This creates a confusion and disorganization in permitting and supervising constructions in Skopje.

There are no general restrictions for selling and buying land. Furthermore, there is no limitation for fragmentation or consolidation of land. Subdivision of private land is permitted as there is no minimum limit for the size of parcel both in urban and rural areas (Dimova & Mitrevska, 2007).

The denationalization process of land started, by the Ministry of Finance in 2000, but until 2009 (when this information was collected) it was not fully completed. The land that was taken from the owners through nationalization in the 1950's must be returned to the original owners (by submission of a request and the necessary legal documents) or the owner can be compensated by a parcel of the same quality and quantity of yields in another location. According to the *Law of denationalization*, facilities of substantial historical and cultural significance and “*natural rarities*” defined by law are not subject of denationalization (Article 7).

In terms of property registration, in the absence of a building permit there are two options. Either people can pay and obtain the building permit, if they have built on a legally-owned parcel according to regulations, or the building is registered in the evidence list. If part of the building is legal, then part appears in the ownership list and part in the evidence list.

In case people have no land-use or ownership rights from the past on the land on which they have built a house, the land is registered in the ownership list as state-owned land and the building is registered in the evidence list together with the name of the occupant. According to the Law for Privatization, which was initiated in 2008, such occupants should pay both for land ownership and for building permit in order to be registered. The municipalities issue building permits through the normal procedure, if necessary infrastructure is in place. If they cannot afford to pay for the ownership rights on the land they may lease or rent the land for several years instead. People have already started participating in the privatization of land project, but as mentioned above not all of them can afford the costs.

Those who occupied vacant “state-owned” construction land and built randomly are registered as squatters on state-owned land and their houses are registered in the evidence list.

Illegal buildings are displayed on the new cadastral maps, marked with a black line, and on the evidence list of REC. However, not all cadastral maps that cover the country's territory are updated; much information is digitized from old maps, so new buildings / constructions are missing.

In February 2011, the Law on the Treatment of Unlawful Constructions (see Appendix) was introduced by the Transport and Communication Minister and adopted by the Parliament. The measure covers buildings important to the state, such as hospitals, as well as citizens' individually-owned houses. The Ministry for Transport and Communication is responsible for legalising the facilities of importance for the Republic in accordance with the Law on Construction or another law, of the facilities of health institutions for tertiary health protection and of the electronic communication networks and devices, while municipalities are responsible for legalising houses up to 10.2 meters high.

The symbolic charge is 1 EUR (61 Denar) per square meter for all, payable in 12 instalments. The government decided on that approach during its January 5th meeting, in order to make it more affordable to the struggling homeowners. The goal was to create as simple and short procedure as possible and at the same time attractive to the citizens. That is an example of good practice. The charges for the

legalization of the commercial constructions are determined by the Ministry of transport and communication and are equivalent to construction permit charges for the specific building use. The charges for a building permit are determined by the Local self- Government. Facilities of importance for the Republic in accordance with the Law on Construction e.g., hospitals, linear features for utility networks, etc are legalized for free. Rejection request can be submitted by an appeal of e.g., a direct neighbor, the land owner, or somebody directly involved with the construction land.

A period of six months was provided for citizens and legal persons to submit all documents to the municipal authorities. *The needed documents for legalization of the illegal buildings are simple:*

- a citizenship certificate (*Copy of ID card*)
- a proof for connection to utility infrastructure (*Copy of paid bill for electricity or water*)
- a land survey report for establishing the factual condition of an unlawful construction with a property certificate for the land where the unlawful construction is built (*geodetic elaborate*)
- a long-term lease agreement of the land concluded with the owner of the land (if the unlawful construction is constructed on a land which is not in ownership of the submitter of the requestor the FY Republic of Macedonia, i.e. the land is in ownership of another natural person or legal entity).

Because of the time required for preparation of the land survey reports by private engineering companies, the municipalities accepted all other documents within the deadline and allowed for a later submission of the land survey report.

The deadline for submission of the requests for legalization of the illegally built objects was 30 September 30, 2011. Around 350,000 requests were submitted by this date. They comprise about 60% of the houses built during the migratory wave from rural to urban areas between the 1960s and 1980s. The procedure for legalization should be finalized in the next six years. The law is very popular and citizens have participated so there is no need that the deadline for submission of requests will be extended.

There is no control of the seismic vulnerability of the constructions at this stage. The law stipulates that the illegally-built constructions must meet environmental and public health standards, fire prevention codes, and construction codes. Authorities are required to determine the actual situation on the ground. Following the receipt of the request for establishing the legal status of an illegal construction, the commission formed by the minister heading the body competent for performing activities in the field of spatial planning, i.e. the mayor of the unit of the local self-government, shall determine the factual condition on the spot and shall prepare minutes regarding the conducted on-the-spot inspection with technical data for the unlawful construction and photographs thereof. Within the next 6 months the agency should decide to accept the request and provide the applicant with an urban consent or reject it. By the Law illegal constructions on parks, protected areas, archaeological sites, areas within the airports protection zones, etc, cannot be legalized unless the authorities will decide otherwise.

Owners of structures that are built illegally on land owned by the state must submit a request to purchase that land within three months of submitting the legalisation request documentation. Otherwise, the authorities determine a long-term lease plan by default. The law requires any money the municipalities receive from the legalisation and land purchases to be invested in infrastructure. As expected, citizens' interest is huge.

As the procedure is still in its initial phase, so far there has not been issued a decision rejecting the request for establishing the legal status where the object should be removed in accordance with the Law on Construction. However, until the deadline, September 30th 2011, many requests for legalization of the constructions in Roma settlements, many of which are in unstable areas, had been submitted. Taking into account that the whole procedure for legalization should be completed in 5 years from now, so far there haven't been issued any decisions regarding these constructions in these areas/settlements.

Lessons learnt from FY Republic of Macedonia include:

- *Adopt a legalization policy that will increase the public trust; make the legalization process inclusive, attractive and favorable to all. Adopt a symbolic and very low legalization fee, make it affordable and brief (simple documentation); this will bring the best results for the economy within the shortest time;*
- *Minimize the legalization costs by minimizing the required controls and the required on-site inspections; the authorities should decide and will either provide the urban consent or not within a specified time following the self-declaration submission;*
- *Any required document that may delay the procedure e.g., the geodetic survey of the informal construction, may be submitted at a later stage;*
- *Unblock the declaration and legalization procedure from all kind of construction and planning controls and improvements; Further improvements (relevant to environmental aspects, public health standards, fire prevention codes, and construction codes), if needed, may follow the improvement of the legal status of the construction.*

4.4 The case of Cyprus

Unlike other Mediterranean and Balkan countries which have dealt with informal development over a long period, Cyprus has never in the past faced such experience. The findings of an original in depth research, made by the author in 2009 on the existing planning and cadastral information about the increased interest for acquiring planning permits, or for sales and mortgages, the level of land values, the increased international real estate market interest, and the maintenance of cadastral data in terms of constructions' registration, show that since 2000, there has been an increase in applications for planning permits. This increase was even more rapid during the period 2002-2004, with a peak in 2004, just before the entrance of Cyprus in the EU. It was rumored that real estate taxation would change due to EU policies and fees would be charged for grants. Finally this did not happen but explains the peak in

activity. The continuous increase of applications for planning permits has overwhelmed the agency's capacity and has increased the pending applications. During the last ten years conveyances and mortgages have had a rapid increase in real estate market activity. Especially property sales and mortgages have almost doubled during the period 2000-2008.

Although the demand for real estate in Nicosia, the capital, comes from the local people and only 7% from the foreigners, it is clear that in the tourist coastal areas (Limassol, Larnaca, Famagusta and Paphos) of Cyprus the situation is the opposite. It is estimated that over 65% of real estate in Paphos district has been transferred, between 2004 and 2007, to foreigners, mainly British. There has been a rapidly increasing international market interest in coastal and peri-urban areas of Cyprus. As a result of the above activity an increase in the market property values is identified.

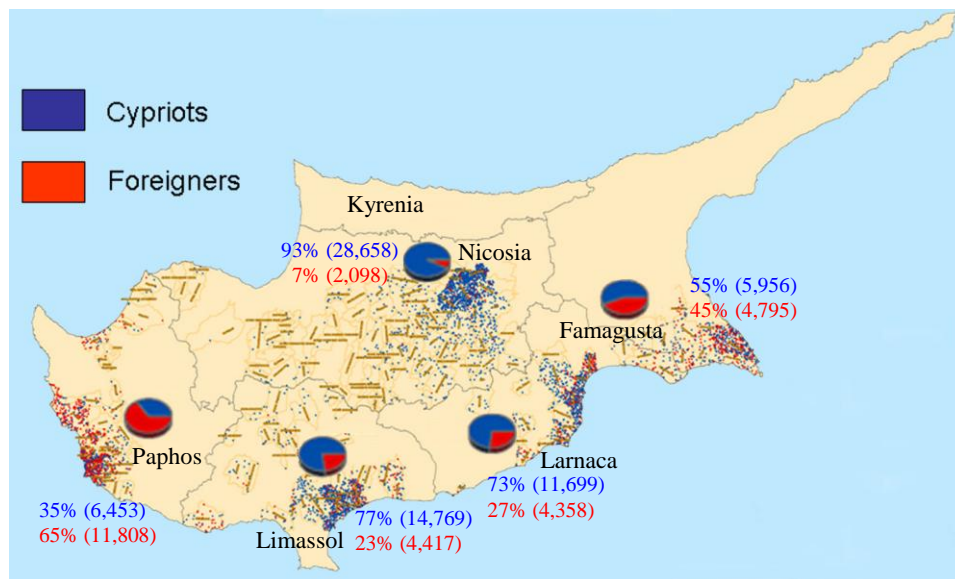


Figure 30. Number of property sales between 2004 and 2007.

Cadastral data, in terms of registration of buildings, were not well maintained. This was partially due to the illegalities that exist in constructions. More specifically, residences on Cyprus may be classified as either condominiums or single-family houses. Condominiums may be registered in the cadaster before the completion of construction because many developers wish to sell before completion. This is considered to be a "preliminary" registration to secure transactions. While 80% of the existing condominiums are preliminarily registered in the Department of Lands and Surveys (DLS) records before completion of construction, a significant number of them did not get any titles after the completion because the final inspection of the building never took place due to construction beyond the limitations of building permits. Therefore no certification of compliance was issued and no final registration was done in the DLS; the remaining 20% were not registered at all.

In terms of existing single family houses, 60% were not registered in the DLS. Only 40% of the single family houses are registered in the DLS. It is estimated that 40% of the non-registered single family houses have small illegalities, while 15% of them have significant illegalities. It is also estimated that 45% of the non-registered single family houses remained as such because the owners were not interested to make any

transactions (e.g., sale or mortgaging). These houses simply serve the housing needs of their owners. According to information provided by the director of the Technical Services in the Municipality of Paphos, 40% of the total number of constructions had not received a certificate of compliance in 2009.

Permitting and regulating procedures on Cyprus are not overly bureaucratic or unrealistic, however due to the market pressure some delays are identified. In order to speed up the development process and meet market and environmental needs the Ministry of Interior is preparing a new Law to introduce urban land consolidation procedures in peri-urban or tourist areas. That way new serviced urban land will be provided in advance of any future development.

On Cyprus no slums are identified; there are a few dilapidated sites in the city center, linked to immigration. *Informal development appeared during the last decade due to the rapid market demand and it may be classified as constructions without a building permit, constructions in excess of building permit limitations and constructions without planning approval. They may lie (i) within the area of the Local Plans, (ii) outside the Local Plans within the greater urban or in rural area in which houses are built illegally where only storage rooms for agricultural products are permitted, (iii) and few houses built within non developable areas. Most common phenomenon are constructions built on legally owned developable land either in excess of building permit limitations or with changes in the issued permits, or without any permits at all although there may have been a possibility for acquiring permit. Illegalities refer to planning and building regulations (figure 31).*

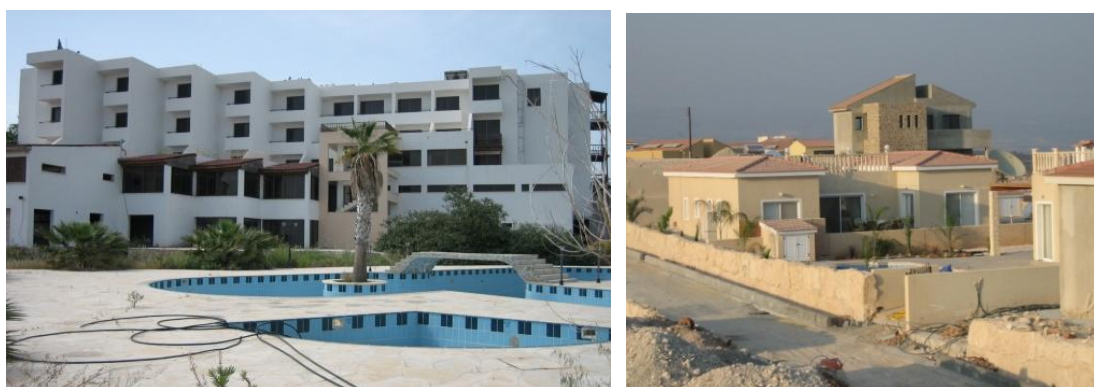


Figure 31. Informal development in Cyprus.

By existing legislation applied penalties for illegalities in construction were scalable. In case of inspection and identification of an informal construction a notification should be made to the owners at a later stage, monetary penalties and denial of services should be applied; prohibition of transaction and mortgage should also be applied. Legislation even required punishment of the private engineer responsible for the supervision of the construction. *After modifications to the construction and a partial compliance to existing regulations legalization was usually possible; demolitions were not applied as it is a very unpopular tool.*

The main motive for informal development on Cyprus has been *the economic profit*, due to the:

- Increased international market demand for secondary houses.

- Increased demand in the local market for larger, more comfortable condominiums/houses.
- Increased demand, due to increased land values, for land use change from rural to urban.

For a legal transaction, or mortgage, the real estate must be registered in the DLS records; title, planning and building permits and certificate of compliance are required.

In practice some transactions of illegal constructions were possible on Cyprus:

- sale contracts of new condominiums could be preliminarily recorded at the cadastral system before the completion of the construction, providing security to the buyer. Illegal condos, though, cannot acquire title since the certificate of compliance is missing. *However, any further legal transaction is impossible.*
- registration of single family houses requires a compliance certificate. In case of illegality of construction, only the transaction of the parcel is legal, since there is a title for the land parcel.

For illegal buildings in terms of planning or building regulations, transactions were accomplished by a sale contract between the owner and the buyer, prepared by the DLS agency and signed by the involved parties, but without a transfer of the title to the buyer; the title remained in the possession of the seller. However, there is no possibility that the seller will try to sell the property for a second time since the contract is registered into the DLS records. The point is that the buyer could not sell the property as he/she had no title. The risk identified here was that through this practice no further transactions could be achieved for a large number of properties unless the cadastral system of Cyprus would gradually be transformed from a titles system into a deeds system. This problem was broadly identified both by the government and by the owners (especially the foreigners, who didn't like this weakness of the system).

In April 2011, following a 2 year period of comprehensive work with the involvement and contribution of numerous authorities, organizations and institutions involved in the construction industry, the House of Representatives has approved amendments of the Town and Country Planning, the Streets and Buildings Regulation, and the Immovable Property (Tenure, Registration and Valuation) Legislations, which were submitted to the Ministry of the Interior. This bunch of legislation amendments, called "*planning amnesty*", *aims at the simplification and modernization of procedures and legal provisions that eventually lead to the securing of updated title deeds by respective property owners.*

The planning and building legality of the building is no longer a prerequisite for the issuing of an updated title. This is an example of good practice. It is made possible for a certificate of registration to be issued for a building with certain irregularities in terms of building and planning permit; however these irregularities are to be recorded on the title. Legalization of planning and building illegalities is optional. Acquiring a new title is obligatory.

The right to activate necessary procedures for the legalization of the development or for issuing of updated title is extended –apart from the owner (who should submit a

statement of intent)- to the purchaser (under certain conditions), as well as to the Competent Authority. Consequently, the owner is no longer the only party that can invoke these procedures. Administrative fines are considered to be the means for obliging those parties with a legal responsibility to comply with their obligations by the law. A fixed three year period, expiring in 2014, is defined for the submission of applications making use of the temporary provisions of the legislation, only where a statement of intent has already been submitted in time.

Irregularities that can be legalized include among others: increase of the approved lot ratio up to 30%; increase in the height, number of storeys or the coverage ratio of the building; differences in the approved layout of the development; failure to comply with the minimum required distances from the property boundaries or between the buildings; change of use; reduction in the surface and the dimensions of existing plots up to 20% of the surface area deriving from the designated plot ratio; failure to complete part of the approved development or incorrect infrastructure construction, etc. By this law only excess of the building and planning permits can be legalized; buildings constructed without any permits cannot be legalized.

If the approved surface of a building or unit in a building is exceeded, a compensation levy will be imposed on the owner or purchaser, which will be equivalent to half of the market value of the area in excess (the market value is defined by the valuation department of the cadastral agency, and a chance to object is provided by the law). These values will be determined on the basis of general estimates carried out by the Department of Land and Surveys. A 20% discount on the levy is set for applications submitted within the first year period. All revenue will be managed by the Local Authorities and used for upgrading projects. So far, this project is at an initial stage; approximately 4000-5000 owners have submitted a statement of intent.

Lessons learnt from Cyprus

- *Updated property titles are a necessity in the globalized economy.*
- *The planning and building legality of the building should not be a prerequisite for the issuing of an updated title; such irregularities may be recorded on the title though.*
- *The owner, or the purchaser, or even the relevant property registration authority should have the right to activate the necessary procedures for the legalization of the development or for issuing of updated title.*
- *Legalization of planning and building illegalities may even be made optional, according to the owner's/purchaser's affordability or will; however, acquiring an ownership title should be obligatory.*

4.5 Seismic vulnerability controls

A special research was made in order to identify what are the seismic vulnerability controls to be applied to informal constructions in the four countries according to governmental policies: Albania, the FY Republic of Macedonia, Cyprus and Greece.

In **Albania** it was decided that a self-declaration of the owner undertaking the responsibility for the quality and safety of the construction should be sufficient for the

legalization of family residential houses up to four floors; it was recognized that most Albanian citizens are experienced in this field as the majority of them are working in the construction sector both in Albania or abroad (mainly in Greece and Italy); besides there is no other alternative to the housing issue.

In the **FY Republic of Macedonia** the legalization law does not require a specific control for seismic vulnerability. Probably, this may be made at a later stage.

In **Cyprus**, property titles are provided (only to those properties with exceeds in the construction permits –not to those built without a permit) with a reference to the planning and building informalities; legalization of planning and building informalities when compared to the construction permit is made optional. At a later stage if the owners intend to legalize the building in terms of building and planning informalities the engineers involved will have the responsibility of applying the control, if necessary.

In **Greece**, the current law aims to formalize the informal constructions for the next 30 years and allow their access to the market/credit. Seismic vulnerability controls may follow at a later stage. Theory and traditional general practice for seismic vulnerability controls (not used for the legalization of informal constructions yet) require that a traditional scientific procedure should be followed before any relevant certificate will be issued. This procedure is briefly summarized and presented below.

According to the current literature, legislation and the practice in civil engineering, the procedure *to check the seismic vulnerability of any construction* (legal or illegal) and to issue a relevant certificate -if needed- including the following controls:

According to Greek practice a structural engineer should visit the building on-site and fill out the following form. See the example given in Table 2.

Structural/ Architectural Feature	Statement	Most appropriate type		
		True	False	N/A
Lateral load path	The structure contains a complete load path for seismic force effects from any horizontal direction that serves to transfer inertial forces from the building to the foundation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Building Configuration	The building is regular with regards to both the plan and the elevation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roof construction	The roof diaphragm is considered to be rigid and it is expected that the roof structure will maintain its integrity, i.e. shape and form, during an earthquake of intensity expected in this area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floor construction	The floor diaphragm(s) are considered to be rigid and it is expected that the floor structure(s) will maintain its integrity during an earthquake of intensity expected in this area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Foundation performance	There is no evidence of excessive foundation movement (e.g. settlement) that would affect the integrity or performance of the structure in an earthquake.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wall and frame structures-redundancy	The number of lines of walls or frames in each principal direction is greater than or equal to 2.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wall proportions	Height-to-thickness ratio of the shear walls at each floor level is: Less than 25 (concrete walls); Less than 30 (reinforced masonry walls); Less than 13 (unreinforced masonry walls);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Foundation-wall connection	Vertical load-bearing elements (columns, walls) are attached to the foundations; concrete columns and walls are doweled into the foundation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wall-roof connections	Exterior walls are anchored for out-of-plane seismic effects at each diaphragm level with metal anchors or straps	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wall openings	The total width of door and window openings in a wall is: For brick masonry construction in cement mortar : less than $\frac{1}{2}$ of the distance between the adjacent cross walls; For adobe masonry, stone masonry and brick masonry in mud mortar: less than $\frac{1}{3}$ of the distance between the adjacent cross walls; For precast concrete wall structures: less than $\frac{3}{4}$ of the length of a perimeter wall.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quality of building materials	Quality of building materials is considered to be adequate per the requirements of national codes and standards (an estimate).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Quality of workmanship	Quality of workmanship (based on visual inspection of few typical buildings) is considered to be good (per local construction standards).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance	Buildings of this type are generally well maintained and there are no visible signs of deterioration of building elements (concrete, steel, timber)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 1. Features of Seismic Concern (source: Tassios & Syrmakizis, 2002)

Structural Element	Seismic Deficiency	Earthquake Resilient Features	Earthquake Damage Patterns
Wall	Clay brick infill with low tensile strength. Non-uniform wall distribution (in elevation or in plan) may create problems related to seismic performance.	The presence of minimum RC shear walls (a Code requirement) led to an improved structural performance	Cracking in shear walls of the elevator shaft (1999 Athens earthquake)
Frame (columns, beams)	Lack of lateral confinement (stirrups) in the columns.	-Capacity design of beam-column joints ensures ductile behaviour of the structure -Good seismic performance on condition of careful detailing during design and construction after the application of the 1985 Code.	Joint failure in poorly constructed structures. Damage to column-beam joints due to bad concrete quality and insufficient reinforcement was observed in the 1999 Athens earthquake (EERI). In many cases, stirrup reinforcement was almost non-existent
Roof and floors		Rigid diaphragms (insignificant relative in-plane displacements).	
Irregular Stiffness Distribution - Soft Ground Floor	Soft story at the ground floor level. Buildings with a soft ground floor are a common practice in Greece. Significantly less rigidity in this floor, compared to the rest of the building, leads to large deformations of the soft story (EERI).	In the 1999 Athens earthquake, the soft-story effect was more pronounced in buildings without shear walls (EERI).	Soft ground floor (where there is an absence of infill walls at the ground floor) may cause damage, leading to the development of collapse mechanisms. In the 1999 Athens earthquake, the damage occurred mainly to the joints, which were totally destroyed in a number of cases. As a result, the structural system became a mechanism, and large permanent horizontal displacements were observed. In some cases, collapse of the soft story was occasioned by P-d effect, combined with high vertical accelerations (EERI).

Table 2. Example of a completed standardized form used for seismic vulnerability control

This form shows a typical examination form for the initial examination of a building and an evaluation of the vulnerability of the building to seismic events. The evaluation may include a vulnerability rating from very poor to excellent (Table 3)

Vulnerability	high	medium-high	medium	medium-low	low	very low
	very poor	poor	moderate	good	very good	excellent
Vulnerability Class	A	B	C	D	E	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 3. Seismic vulnerability rating (source: Tassios & Syrmakizis, 2002)

The best possible rating is F: VERY LOW VULNERABILITY (i.e., excellent seismic performance), while the lowest possible acceptable rating is D: MEDIUM-LOW VULNERABILITY (i.e., good seismic performance). In case the building is not rated within this range “therapy” studies are needed in order to improve its performance.

Greek engineers propose the following evaluation process in case informal constructions are to be checked for seismic vulnerability and safety leading to a relevant certificate to be signed by them and issued:

1. On-site inspection and compilation of a record with structural and architectural features of the construction (this may be a standardized form; see the example above)
2. Compilation of “therapy” studies (for seismic risk, e.g., for high, medium-high and medium vulnerability)
3. Implementation of “therapy” studies
4. Final on-site inspection and approval of improvements (this may be done by state employees or by a licensed private practitioner)
5. Issuance of certificate signed by a structural engineer and by other specialists (e.g., for seismic vulnerability, for fire security, and for good quality of networks) and compilation of the final record of the construction, which includes all “as build” documents and approvals of the construction. Following this process, the construction should remain as such; any further deviation is considered to be a new illegality and is subject to punitive liability.

The documentation of the existing construction during the first on-site inspection should include:

1. Detailed field survey in the European Coordinate Reference System
2. Architectural plan and definition of the “use” for each space
3. Adjudication of the structural features
4. Survey of the construction’s networks (electricity, water, sewage, gas).

The record of structural and architectural features of the construction is called an “identity record of the construction” and contains all relevant documents and technical reports.

“Therapy” reports include all studies for the necessary improvements in order for the construction to be considered “legal and safe” and to be in compliance with the existing regulations. These reports include architectural improvements to comply with the required building code regulations; structural improvements for the safety of the construction according to the seismic regulations; electrical and mechanical studies for network improvements and compliance; and special studies for the adaptation of

the construction to the regulations valid according to its actual use within its urban and natural environment (e.g., sufficient waste management, road network, etc).

Encouragements are often provided to the private sector and/or the municipalities such as subsidies, low interest loans, etc, for the implementation of these improvements.

During the compilation of therapy studies the construction must be checked for its stability/seismic vulnerability; in case all structural features are not sufficiently visible x-ray examination is needed in order to identify the hidden steel building elements. Such x-ray examination, e.g., for a one floor building of 120 m² may cost 3,500-5,000 EUR and would give an estimate of the hidden steel elements at an accuracy of 85%. Based on that information and on the recorded geometric data the structural engineer can calculate the stability of the construction and can then compile the “therapy” studies and propose improvements, if needed, according to the construction’s main use and the seismic code valid for the region.

Buildings are usually classified into three categories according to their “main use”:

1. Residence,
2. Professional use, and
3. Professional use that requires special operation license.

This classification refers to the insurance fees required for each “activity”. For example, the market value of a small commercial shop of an area size of 50 m² may be 80,000 EUR, but the total value of the stored products may be 800,000 Euros. In this case the market value of the building is of lesser importance in comparison to the value of the products stored inside it. However, a small hotel’s market value maybe 800,000 EUR, while the furniture and other equipment may have a value of only 80,000 EUR. In that case the building’s market value is more important than its “activity”. The same principle rules both insurance coverage and the state imposed property taxation.

Thus, for a clear categorization of the constructions, *special operation licenses* are required for activities that rely on the building itself (when the building is the main “tool”), or for activities in which the main property element is the building itself. The type of “activity” is also important in terms of “public accumulation”, which is also a critical factor in areas of seismic risk.

In areas of seismic risk, the *size of the building and its type of activity* are important for each informal construction as to whether its seismic vulnerability should be thoroughly checked or not (For instance a shop larger than 350 m² should be checked for its seismic vulnerability according to its human occupancy according to the formula: $\text{Occupancy} = 350/15 = 23 \text{ people} > 10$, equivalent to “supermarket” status).

In general, commercial small buildings, e.g., of a size of 100 m², including offices, store houses, and any other activity that does not require a special operation license, and where no public accumulation is anticipated, are classified into category 2.

Discussion

The thorough seismic vulnerability evaluation process is intended mainly for informal buildings of category 3 for which a special operation license is required and which should be updated every year, or a maximum of every 5 years, such as public buildings, high-rise buildings, hotels, clinics, super markets, restaurants, bars, schools, theaters, cinemas, industries, factories, etc, and any other institutional constructions that may accommodate large accumulations of people. Such a certificate of seismic evaluation should be required before issuance of the special operating license. Firm deadlines should be required for completion of these evaluations.

For informal buildings classified as categories 1 and 2, the owners may be asked to adjust gradually to the requirements, after legalization, and undertake the responsibility to provide such certificates in any future transaction (when it may be required by a buyer, tenant, etc). However, buildings classified to category 3 should be checked and receive the seismic vulnerability certificate before any issuance of a special operation license.

The Albanian policy assumes, statistically speaking, that the majority of the contemporary small sized buildings, or family constructions of residential or professional use, would easily pass the on-site vulnerability tests as locals are usually experienced with construction techniques and the materials required for their region, and they choose the best for their own homes. Legalizing informal residential buildings will solve the housing problem for a certain period. By that reasoning, it was decided not to require on-site controls for buildings of residential use up to 4 floors. Probably, similar reasoning applies in FY Republic of Macedonia.

It should be recognized that on-site inspections are expensive and time consuming. Greek academics and the Technical Chamber of Greece emphasize that such inspections -if applied for all informal constructions- are subject to professional ethics in order to avoid unnecessary improvements and unnecessary expenses for the owners. Involved experts should not see this as a special fee-charging opportunity at the expense of owners of buildings.

Lessons learnt

- *Seismic vulnerability controls of informal constructions require on-site inspections by specialized structural engineers; compilation of “therapy” studies for improvements where needed; supervision of the implementation of improvements and continuous control. Such controls require an application of appropriate professional ethics.*
- *Thorough seismic vulnerability controls are mainly intended for completed informal structures of professional use that require a special operation license, public buildings, high-rise informal buildings of all uses (hotels, restaurants, etc) and other institutional constructions that may accommodate large accumulations of people. Such controls should be commissioned to licensed engineers.*
- *Single-family houses and residential buildings of moderate height and good construction quality are considered to be “safe”, as long as the intended residential use of such buildings is not changed. In Albania the state only*

legalizes the ownership rights (by providing improvements of minimum urban norms and standards) but undertakes no responsibility to assure the quality and safety of the construction.

- *In Cyprus, legalization of constructions where the building and planning permits have been exceeded are optional and will be accomplished at a later stage, only after strengthening of property titles. The involved private structural engineers are then expected to undertake the responsibility for that process.*

4.6 Experience from urban integration in areas with Roma settlements

During communism those Roma who had preferred to maintain a nomadic way of life were settled by force, e.g., Roma were forced to move to small apartments in Yugoslavia during socialism but this measure has failed. After the political change in Eastern and South-Eastern Europe many Roma have fallen victims to new eviction measures. Recently, there has been an increasing intolerance and violence against Roma settlements in Europe. Some examples are e.g., the Neo-Nazi's attempt to attack Roma in the Czech city of Litvinov in 2008; the French campaign against Roma from Romania and Bulgaria in 2010, and the expulsions of 300 informal Roma settlements' inhabitants; the murders of Roma in Hungary in 2008; and the reported police violence against Roma in Eastern Slovakia in 2009 (Hammarberg, 2011). In many European countries Roma are still denied basic human rights in terms of housing but also education, employment, and health standards.

In many European countries Roma also lack the right of citizenship. Thousands have no administrative existence. They have never obtained birth certificates, partially due to their culture, and thus they are not administratively recognized by the state. For this reason there are no exact numbers for the size of Roma population in Europe. It is estimated to be 10-12 million; this number makes Roma the largest European minority. About 70% of Roma live in central and eastern Europe and in the ex-Soviet countries. Approximately 400,000-1,000,000 live in Hungary, Serbia, FY Republic of Macedonia, Montenegro, Slovakia and Turkey. Spain is the country with the largest Roma population in the western Europe (about 630,000), France has about 310,000, Italy about 130,000, Greece about 350,000 and Germany about 70,000 (Alexandridis, 2008). *Political developments in Europe during recent decades have increased the housing problem and the difficulties of Roma in accessing land for housing.* For example the break-out of former Yugoslavia and former Czechoslovakia has caused enormous difficulties to people who were regarded by the new successor states as belonging somewhere else even though they had been long-term residents there (e.g. the case of the early Czech republic's citizenship law which rendered stateless thousands of Roma people with the intention to force them to move to Slovakia; this problem was partially solved in 1999. The same situation occurred in Slovenia and the problem has started to be addressed only since 2010; *the Kosovo conflict has led to a large displacement of Roma to other Balkan countries Serbia, Bosnia, Herzegovina, Montenegro, FY Republic of Macedonia, even Italy, Greece and elsewhere.* Some European states now spend considerable funds to enable the return of the Roma to their countries of origin. During 2009, more than 420 forcible returns took place in Pristina. As reported, the majority of returnees came from Germany, Austria, Sweden and Switzerland (Hammarberg, 2011). However, as Hammarberg points out, *it would be much better if these funds were made available to the Roma in order to improve*

their standards of living in these countries, as it is difficult especially for the children to change languages, schools and homes.

Poor education levels are a major obstacle for Roma preventing access to the labor market. And those who cannot get a job, cannot improve their housing, affecting their health and their children's health and education; thus the vicious cycle persists across the generations. Many Roma live in substandard housing, in places with insecure land tenure, lack of legal property rights, in slums without running water, indoor toilets, electricity and heating, close to landfills or in isolated settlements without utilities (postal address, medical centers, schools, transportation network, fresh water and sewage systems, etc) (Alexandridis, 2008).

According to the findings of the research, the following typology of land tenure can be still noted in the various European countries:

- Roma who legally own the house and the land, or the apartment they live in
- Roma who live on plots of land that belong to private individuals
- Roma who legally own plots of land but are not allowed either to build their houses (or they have built illegally without a permit), or to park their caravan and be connected to the public facilities networks
- Roma squatting on municipal or state owned land
- Roma squatting on private land (usually rural land) causing problems to the land owners
- Roma squatting on state or private land that present special health considerations (e.g., industrial areas, landfills, etc)
- Roma who still ascribe to a nomadic lifestyle.

4.6.1. European Policies

Improving the legality in terms of land tenure and the infrastructure of Roma settlements is one of the top goals of today's European Council policies, the UN and the High Level Commission for the Legal Empowerment of the Poor (HLCLEP). Both the UN-Economic Commission for Europe and the HLCLEP investigate tools to include the poor in the formal land sector and they especially focus on the formalization of legal rights on land inspired by the theories of the Peruvian economist Hernando de Soto (De Soto, 1989; 2003). The outcome of formalization should be to make the informal activities part of the growing formal sector that provides decent jobs, access to markets, social protection and security, and gives access to the international trade system. Member states should establish a legal framework that conforms to the international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out. In the case of legal evictions Roma must be provided with appropriate alternative accommodation. In recent years there have been reports about forced evictions of Roma who have illegally occupied land in Albania, Bulgaria, France, Greece, Serbia, Turkey and the UK, for the purpose of urban regeneration projects or for new constructions; most of those evictions are not accompanied by alternative accommodation.

Recent reports published by the Commission for Human Rights, the EU's Fundamental Rights Agency, and the European Commission show that in Europe the groups that are particularly vulnerable to racism include Roma, Sinti, Travellers,

Gypsies, members of African, Jewish and Muslim communities, migrants, refugees, asylum-seekers, other national, ethnic or religious minorities, and indigenous people. Discrimination based on ethnic origin is seen by 62 % of respondents to be the most widespread form of discrimination in the European Union.

Respect for equality in diversity is a central premise for building democratic and inclusive societies. In recent years there has been a variety of literature and declarations “against racism and discrimination” published by relevant organizations like the Council of Europe, the European Roma and Travellers Forum, the Organization for Security and Co-operation in Europe (OSCE), the United Nations High Commission for Refugees and the United Nations High Commission for Human Rights. All of these reports appear to have been directly or indirectly inspired by Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and particularly the Committee on Economic, Social and Cultural Rights’ General Comments 4 and 7. *“Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups”*. There are a number of such publications e.g., the “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living”; the “Decision No 566 Action Plan on Improving the Situation of Roma/Sinti within the OSCE Area”, Recommendation Rec (2004) 14 of the Committee of Ministers to member States on the movement and encampment of Travellers in Europe and the Recommendation Rec (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe; the “Framework Convention on National Minorities”; the “European Social Charter”; the relevant jurisprudence of the European Court of Human Rights; the “Charter of Rights for the Roma”; and the “Joint statement of the EU Fundamental Rights Agency and the Council of Europe”, 2009 Durban declaration.

Governments and stakeholders are also encouraged to place human rights in the centre of their policy formulation and its implementation in the housing sector. According to the UN/CESCR statement, *“adequate housing”* should have sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services. Moreover, adequate housing should be made affordable and habitable, that is properly located in safe distance from polluted areas and protected from cold, damp, heat, rain, wind or other threats to health, as well as from hazards and diseases. Adequate housing must also ensure the physical safety of the residents and their accessibility to employment opportunities, health care services, schools, childcare services and other social facilities (UN/CESCR, 1991). However, in most cases, Roma cannot afford to buy a house and most often are not eligible for a mortgage.

According to the Fundamental Rights Agency (FRA, 2009), there is little data on home ownership among Roma, but the existing information shows that it varies greatly among EU Member States. In addition, according to the European Union documents, the socio-economic situation of Roma and their access to property rights

on land and adequate housing in Europe is still under-researched. There is not much information available about the states' responses and the policies adopted by the various countries and the conditions of affordable housing of the Roma, and the possibilities of access to land and legal rights on land. In general domestic courts and authorities tend to ignore EU declarations while the international courts assign a particular importance to them.

Different social policies have been applied without significant results. For example in France the state has offered access to social housing; as an additional measure the French state decided that school education should be a pre-requisite in order Roma to be offered access to social housing; recently the municipalities of France have expanded their Urban Plans to include and upgrade Roma settlements and to provide special planning zones where the Roma can station their caravans. Another positive example of improving Roma housing is the Spanish Housing Program for Social Integration (HPSI), which promoted home-ownership through state-subsidies in preference to the provision of rented social housing. It is estimated that half of the Roma home-owners acquired their home property through this policy (FSG, 2008). Other good practice cases are the examples of the municipalities of Gorica in Sarajevo, of Kraljevo in Serbia and in Gjilan in Kosovo where Roma were included in social housing programs funded by foreign agencies (Alexandridis, 2008).

4.6.2. Experience from Roma in Greece

A specific on site research was made for the purposes of a similar previous study, including interviews with local authorities, citizens, and Roma representatives. The target of this research was to identify experience from Roma settlements integration into a city plan. The research was mainly focused on "Zefyri", one of the municipalities of western Athens, in Greece, with the biggest percentage of Roma population. The findings, in terms of time schedules and policies applied, are summarized in the following.

The history of Roma in Greece goes back to the 15th century. They came to Greek territories in the help of the Sultan that was ruling Greece at that time as a missionary core. Due to their nomadic nature, they are not concentrated in a specific geographical area, but are dispersed all over the country. The majority of the Greek Roma are Orthodox Christians who speak the Romani language in addition to the Greek. They are usually occupied in "roving trade" selling antiques, bedcovers, vegetables and fruits, or they are musicians. In the past they used to repair furniture, to do iron constructions but such professions are now scarce.

Roma in Greece live scattered on the whole territory of the country, but a large concentration is located in the bigger cities, mainly in Athens and Thessaloniki. Roma largely maintain their customs and traditions. Although in Greece a large number of Roma has finally adopted an urban way of living, there are still slum settlements in some areas. There is also a number of newcomers from the greater Balkan region, who are not accustomed to the urban living, however they tend to join Roma communities creating slums and intercommunity problems. In many cases the Roma community discourage the newcomers to settle permanently in their area as they create environmental damage and increased criminality.

Roma settlements were located in the greater region of western Athens, in the municipalities of “Agia Varvara” (which has a very successful Roma community), “Ano Liosia”, “Menidi”, “Zefyri” and “Aharnon”. Western Athens was a poor, low income area during the 60s. The latter two municipalities have the bigger concentration of Roma population in Athens, about 6,000 inhabitants. The research is focused on the municipality of Zefyri (www.zefyri.net), where the Roma population is approximately 3,500 inhabitants (1/3 of the total population of the municipality). The municipality of Zefyri was rapidly urbanized informally, in the 60s. Roma in Zefyri had occupied private or public land (like public areas, stream roots, or vineyards, olive groves, and other privately owned rural parcels) and had created slums. Frequently Roma were evicted from such areas by the police, but they always resettled themselves in other similar areas. Soon after the military government, in 1975 the municipality initiated an urban regeneration project using local planners, and the new urban plan was ratified by 1977, and became a law of the state. Since then the municipality works in close cooperation with the Roma community. The full implementation of the plan and the infrastructure improvements were completed by 1995. However, several fundamental improvements had been accomplished much earlier, e.g., ~85% of Zefyri municipality had a sewerage system implemented since 1986.

Instead of being evicted, Roma were offered low interest housing loans guaranteed by the Hellenic state, and were enabled and directed to buy the land they had occupied to build a proper house. In the meantime many Roma, as they were not evicted by the police since 1974, had managed to obtain ownership rights through court decisions by using the “adverse possession” principle. *It should be mentioned that cases of malpractice were identified* mainly due to the fact that Roma do not register their marriage to the municipality records (e.g., more than one member from each family had applied for a credit loan and instead of using the money for housing purposes they purchased expensive cars; women usually apply for social care and state funding as they declare to be “single mothers”, etc). In other municipalities in western Athens, where similar policies have been applied, the situation is worse. Roma were simply willing to sell their new houses and return to tents. They prefer to live in a tent and use the money to buy cars, electronic equipments, etc.

Today, the majority of Roma in Zefyri, and some other municipalities also in Athens, live in self-owned modern, 1 or 2-story houses of good construction; however many have adjusted the architecture to their own specific customs (e.g., the toilet is always build outside in the yard). *They have addresses and an identity cards, they pay utility bills, taxes, and they join the army, as all other Greek citizens. However, they still get only the lower education; few children join the high school, although education in Greece is provided for free even at the University level.*

The unfortunate situation is currently created by the newcomers in Zefyri municipality and in all other Roma communities in Greece, who are temporary settlers living in tents in the areas planned for common use (e.g., public squares, parks, etc), and make illegal connections to fresh water and electricity networks; as mentioned above the Greek Roma community does not encourage this situation. Slum constructions are again evicted by the police.

Despite these long state efforts, many Roma communities in Greece still face several problems including child labour, low school attendance, and drug trafficking. Similar situation is identified in many other European countries. Different social policies have been applied without significant results. Roma prefer to live close to nature, so the policy of resettling them in tall social housing buildings has little chance to succeed, unless it is accompanied by strict enforcement measures. Another major issue that must be solved in such cases is the difficulty in maintenance of social housing buildings. For example in France the state has offered access to social housing, but still Roma cannot be integrated. As an additional measure the French state decided that school education should be a pre-requisite in order for Roma families to be offered access to social housing.

Lessons Learnt

- *Political developments in Europe during recent decades have increased the housing problem and the difficulties of Roma in accessing land for housing;*
- *the Kosovo conflict has led to a large displacement of Roma to other Balkan countries Serbia, Bosnia, Herzegovina, Montenegro, FY Republic of Macedonia, even Italy, Greece and elsewhere; Some European states now spend considerable funds to enable the return of the Roma to their countries of origin;*
- *as Hammarberg points out, it would be much better if these funds were made available to the Roma in order to improve their standards of living in these countries, as it is difficult especially for the children to change languages, schools and homes.*
- *Improving the legality in terms of land tenure and the infrastructure of Roma settlements is one of the top goals of today's European Council policies, the UN and the High Level Commission for the Legal Empowerment of the Poor (HLCLEP).*
- *An example of good practice: Instead of been evicted, in Greece, Roma were offered low interest housing loans guaranteed by the Hellenic state, and were enabled and directed to buy the land they had occupied and build a proper house. It should be mentioned though that cases of malpractice were identified. Today, the majority of Roma in Zefyri, and some other municipalities also in Athens, live in self-owned modern, 1 or 2-story houses of good construction. They have an address and an identity card, they pay utility bills, taxes, and they join the army, as all other Greek citizens. However, still they get only the lower education; few children join the high school, although education in Greece is provided for free even at the University level. The unfortunate situation is currently created by the newcomers in Zefyri municipality; the Greek Roma community does not encourage this situation.*

5. LEGALIZATION OPTIONS CONSIDERED BY THE RELEVANT AUTHORITIES OF MONTENEGRO - COMMENTS AND PROPOSALS

This chapter investigates the policies that have been considered by the government of Montenegro in dealing with the phenomenon of informal development. In parallel some comments and some comparisons of these policies with the current international experience are made and some proposals are provided.

- Government: After about 50 years of illegal construction, in 2008 there was an amendment of the Criminal Code of Montenegro and changes in the Law on Construction of Objects. The Criminal Code, with its changes and amendments in 2008, incorporated (Articles 326 and 326b) new criminal offences in the criminal-legal field. Construction of structures without building permit, or contrary to the permit and technical documentation, and connection of illegal construction to utilities infrastructure are considered to be criminal acts. The electricity company that will allow connection without a building and occupancy permit will also be accused of a criminal act. For those criminal offences imprisonment from six months to five years has been defined. Illegal constructions built before the adoption of the new Criminal Code in 2008 may not be demolished. However, those built after that date should obligatorily be demolished.

Comment: International experience shows that adoption of such strict deadlines without making any serious system reforms simply create a new generation of informal settlements. This creates more corruption and public mistrust and makes it even more difficult to deal with informalities in the future. There is a need for land reforms.

- Government: In addition, constructions without a use/occupancy permit cannot be registered in the cadastre.

Comment: While in the cadastral records there are registered only 39,922 illegal constructions, unofficial statistics claim that in total there are more than 130,000 illegal buildings in Montenegro. The impact of this measure on the economy and on sound decision-making is huge.

- Government has worked to elaborate the planning documentation and strengthen the **on-site inspection supervision system** by introducing inspectors for urbanism, inspectors for spatial protection and inspectors for construction. Other competent inspections in line with special regulations are incorporated in the Law on Inspection Supervision, the changes and amendments of which have been adopted. All inspection bodies are obliged to inform each other on measures and actions undertaken within prescribed competencies (article 145 of the Law on Spatial Development and Construction of Structures).

Comment: In its effort to eliminate informal development the government of Montenegro is making the development process even more complicated, costly and bureaucratic. Excessive on-site inspections are costly and in general are likely to increase corruption. This approach makes planning an even more expensive, complicated and bureaucratic procedure. Environmentally sensitive areas may be protected by automated monitoring methods.

- According to the Ministry's action plan, the first step is to update the data base of the illegal objects; data are required from the municipalities. The second step is to finish the compilation of the orthophotos for the whole jurisdiction, and the third step is to do the detailed cadastral surveys of the remaining 30% of the territory.

The Ministry of Sustainable Development and Tourism understands that there is a variety of cases (e.g., informal settlements in locations of special natural beauty) that may require **different policy approaches** (see example in Momisici C area in Malo Brdo).

Emphasis is given, by all involved agencies, to **seismic risk**. According to the interviews with decision-makers, it was suggested that legalization should provide options and solutions for all, including the low-income and poor citizens as well. It was said that the purpose is to **legalize as many objects as possible**, except those that are built in the common use areas, cultural and historical sites, national parks or protected areas according to the plans. It is expected that the majority of illegal occupants in the coastal zone and in the municipality of Podgorica may afford to pay the property taxes and the other costs required to obtain the necessary documents for legalization, however some **social criteria** and discounts (e.g., first residence, number of family members, type of informality) should also be adopted, especially in the northern region. However, whatever policy will be finally adopted should balance between the interests of the legal and illegal investors. It is also broadly admitted (by all interviewed experts) that **communal fees are too high** for the average income of the citizens and probably a formula should be found to enable people to **pay these fees in instalments over 20 years**.

Comment: The policy considered by the Housing Department of the Ministry of Sustainable Development and Tourism seems to have an inclusive intention. However, there is a big risk that through implementation several fundamental principles will be overlooked, especially because legalization is planned to fit with the practices and policies of a highly controlled economy. If the state and the local administration had the capacity and experience to work efficiently the problem of informal development would not have existed. It is globally recognized that an extended phenomenon is an indication of a system's failure. Either the procedures are bureaucratic or not affordable to the people, or people are not motivated to be legal or, even worse, they see no benefit from being legal, or they do not trust the state. The general idea of considering by Constitution Montenegro as the "first ecological country" indicates a preference for a planning policy that will strictly "control" development instead of "facilitating sustainable economic growth". Moreover, it is debatable whether the existing planning system and administrative capacity is capable of providing and implementing the necessary environmental and ecological services.

International experience shows that in a free market economy better results can be achieved if legalization is simple, quick, affordable and attractive to all, without excessive documentation requirements.

Taking into consideration that

- *communal fees and the property taxes are unrealistically high for the average monthly income (only 20-30% of the citizens manage to pay the property taxes)*

- *there is a significant percentage of poor and unemployed people in all regions, who periodically may move within the country in search of temporary jobs*
it seems complicated and rather awkward to adopt different legalization approaches for the different locations, especially in a small country like Montenegro.

Instead, a unified legalization approach may be preferable; fees and overall costs may be scalable according to the owner's real property portfolio. Annual property taxes that will be applied after recognizing the ownership or long-term lease rights may be scaled according to the market value of the real estate (location is always an important factor that together with other parameters e.g., construction quality, age, etc determine the market value). Market mechanisms will soon unlock the potential value of each location, while property owners may then consider several options to satisfy their housing needs. For certain areas of particular natural beauty a specific approach may be adopted; however such areas should be pre-selected and delineated on the orthophotos and in any case such areas should be limited in number and size.

- In general, the local experts in the Ministry of Sustainable Development and Tourism seemed to realise that, as discussed in the recent international literature, measures like:
 - expensive on-site inspections,
 - police measures and imprisonment,
 - demolitions,
 - extremely high property taxes, communal fees and/or penalties,
 - denial of registration in the cadastre without the building and occupancy permit,
 - denial of connection to utilities infrastructure,
 are not expected to provide permanent and positive solutions to the problem of informal development.

It is roughly estimated by the Ministry that the revenue from communal fees may be approximately 950 M EUR (for ~100,000 objects of an average size of 100 m² each); this is expected to be collected within the next 20 years. The annual revenue from property taxes from the legalized objects may be 42.5 M EUR. Revenue is also expected to be derived from legalization penalties; this may be scalable depending on the type of illegality, location, quality of construction, etc and it is roughly calculated to be 142.5 M EUR (95,000 objects x 1,500 EUR).

Comment: Even the Housing Department of the Ministry understands that the above estimate is very optimistic and unrealistic. It is absolutely necessary that government may try to increase awareness among all stake holders and professionals about current trends in participatory and affordable planning which instead of aiming simply to “control development” it would “facilitate growth”. Through this spectrum communal fees should become affordable and planning requirements/provisions should be modified accordingly.

- As mentioned in the MSPE (2010) the government considered the possibility that the policies of formalization may include the following:

- An agreement with the municipalities that the owners will pay the communal fees through bank loans within a period of 10-30 years, having in mind that for an average building of 100 m² the communal fees may be more than 10,000 EUR while the average salary of the head of a 4-member family may be 400 EUR per month. Governmental experts compare the monthly instalment payment of such communal fees with the monthly expense of a mobile phone bill

Comment: Most likely only the state employees and those working at the most stable private companies will qualify for such bank loans. Besides it is not common practice that citizens will be asked to get bank loans to pay taxes or communal fees. This approach might be used under different circumstances e.g., if the general economic status of the people was upper low-middle (with stable employment, etc) and they were all qualified for lending. A bank loan is a long term commitment while the use of a mobile phone may be terminated any time; such a comparison is not reasonable.

- An agreement with the utility companies (state or private companies) to provide motives/discounts to the bills of the “legalized buildings” owners

Comment: This means that the state will somehow subsidize the bills; is that possible? This may happen in the case that utility companies are state enterprises; however, this also is not common practice in the free market economies.

- The possibility of acquiring the necessary certificates with the cadastral information that the owner has to submit for formalization, by getting a copy of the immobile property list with the cadastral data (information about each parcel) directly from the cadastral agency and skip the 5 EUR cost per parcel

Comment: This is a good idea.

- An agreement with international donors for subsidizing the cost for the survey

Comment: This, too, is a good idea -if possible.

- An agreement with the union of Montenegrin engineers for an extension of payment period for the controls, certificates and plans needed for formalization

*Comment: In the “Strategy 2008” text it is mentioned: “Having in mind the scale of the project, the entire expert public would be involved in the project. All Montenegrin engineers in this field would be recruited in the following several years (**estimates indicate ten years at least**)”. It is good to create job opportunities; however, emphasis should be placed on professional ethics, as the concept of legalization is not to keep engineers busy, neither to make the procedure long. Such projects should finish in short time. As Gavin Adlington, a WB land administration specialist, said “...in the past governments asked professionals: what needs to be done? How much it will cost? How long it will*

take? Today, many governments tell the professionals: this is what needs to be done; this is how much money you have; this is when it must be completed” (Adlington, 2011). From this point of view most of the detailed requirements for legalization may be minimized, made more affordable or postponed for a post-legalization stage.

In any case the free market should define the fees for services; government should not get involved in agreements with the private sector about fees; fees should not be fixed but should be variable depending on the scope of the required service.

- The formalization phase may consist of two stages: Stage A may include the identification of illegal buildings, the orthophoto production, the compilation of the detailed survey plans of each plot and building, and the contract with the municipalities to expand the payment period for the communal fees; Stage B may include the compilation of the detailed urban plans, the controls and issuing of the certificates for seismic vulnerability, the issuing of occupancy permits to use the buildings, and the final legalization.

Comment: Before legalization, it would be much preferable to separate ownership rights from any obligations or any kind of permits like construction and occupancy permit, operational permits in case of commercial buildings and planning permit / requirements, and have:

As phase A:

- *orthophoto production;*
- *identification of those areas of special interest where special policy approaches will be applied, and of illegal zones within which a unified, simple and quick legalization will take place and where further construction may be permitted (with minimum norms and standards); seismic maps and GUPs may be used during this process;*
- *brief on-site inspections for compliance with the minimum norms and standards and simple visual inspections for the stability of the constructions in case of single residences up to 2-3 floors; inform occupants about results and make the certificate of seismic vulnerability optional at this stage but obligatory in case of change of use or in case of sale;*
- *acceptance of the existing built-up situation as the detailed spatial plan; few constructions that do not fit will be demolished after resettlement of occupants;*
- *affordable privatization of land (when for first residence, up to a minimum plot size) accompanied with a simple survey of the property including the footprint of the building and its basic characteristics (area size, floor number, construction type, photo) , and title issuing. Purchase of land at market value in other cases; alternative possibility for long term leasing in case people cannot afford the prices;*
- *Registration of property rights in the cadastre and legalization (permit for integration of these buildings into the property market);*
- *Obligatory detailed controls for seismic vulnerability and other requirements in case of commercial multi-family blocks of apartments*

and buildings of any type of commercial or public use before issuing occupancy permits to each apartment and before issuing operational permits to public or commercial buildings;

As Phase B:

- *detailed planning; improvements should be provided with a priority to utility networks and infrastructure provision, improvement of access to houses by pedestrian paths and lighting of the settlements, garbage collection, implementation of sewage system where needed; traffic and parking improvements should be made mainly in the periphery of the settlement (similar to the situation in most of the old towns and settlements worldwide). Settlers should participate actively in the process. Part of the local authority responsibility may be commissioned to the settlers; settlers, as tax payers, may have the responsibility for managing the tax revenue.*
 - *construction controls and improvements, infrastructure improvements in the neighbourhood and other certificate issuing according to the market needs (environmental, energy efficiency, etc).*
- UNDP puts an emphasis on improving the **energy efficiency** of the buildings, within the “ecological concept” of the country, prior to legalization. The proposal of UNDP on energy improvements is first to do some pilot projects by giving specific loans to the owners of illegal constructions in order to make the necessary energy improvements e.g., double windows, roof and wall insulation, etc., hoping that there will be an investment return after a certain period of time in the electricity bills that people will pay. According to UNDP it is estimated that such improvements may cost at average 4,000 EUR per house and that they may provide about 40-60% saving in the electricity bills. The saving from that investment may then be used by the owners of the illegal buildings to pay the communal fees which are very high (Janjusevic, 2011).

Comment: International experience shows that there is an urgent need for provision of clear legal property titles and access to market prior to any planning and construction improvements.

Specifically on this UNDP “energy efficiency” proposal, it may be said that it is an excellent idea but such a project may be offered to all constructions optionally normally following the property title issuing.

Moreover, it is not clear how and why the banks would provide credit for energy improvements in illegal houses prior to titling. Introducing “energy improvements” is a measure with dual benefit: both for the environment and for the economy as it creates job positions and helps in saving energy. The only concerns are first on the obligatory character of this measure that forces all citizens to get a loan for that purpose (while they may have other more vital needs) and second on the fact that not everyone is qualified for such a loan.

- According to the interviews, the UNDP experts recognize that:
- the communal fees are too expensive for the average citizen;
 - there is a pressure from the government for a massive and quick legalization;
 - there is a need to integrate the maps for seismic risk and the relevant seismic regulations with the new detailed urban plans;

- there is a need to legalize after the compilation of all detailed urban plans,
- there is a need for connecting the legalization project with the necessary energy improvements of the buildings, etc.

For these reasons UNDP experts propose to legalize the constructions in an incremental mode, after the compilation of specific pilot projects.

Comments:

- *It is true that there is an urgent need for an inclusive and quick legalization; that the amount of communal fees and real property taxes is unrealistic; that seismic risk maps should be matched with the detailed urban plans;*
 - *However, legalization and issuing of clear property titles should be given priority;*
 - *Property titles may then mention that thorough technical seismic vulnerability controls and energy efficiency certificates have not been issued for the property. Such certificates may be issued at a later stage, according to the market need, and should not affect the ownership rights of the property;*
 - *Energy improvements in constructions should not be obligatory and connected to legalization and issuing of property titles, unless the expenses for that will be deducted from the general legalization costs;*
 - *Compilation of detailed urban plans and issuing of all kind of certificates may follow legalization/titling;*
 - *There is a risk that pilot legalization projects may delay the legalization progress and its expected benefits enormously.*
- According to the last version of the “Strategy 2010” document (MSPE, 2010) and the draft law for legalization, the prerequisites for legalization are:
- (a) The existence of a detailed urban plan and the compliance of the construction;
 - (b) On-site inspection of the construction in terms of compliance with building and planning regulations;
 - (c) On-site inspection for rating the seismic vulnerability of the construction; and
 - (d) Certificate of ownership rights.

The necessary documents for acquiring a building and planning permit are:

- (a) Proof of ownership right of land and building (registration in the cadastre with a notice that the building was built without a permit)
- (b) Proof of arranging the payment of communal fee
- (c) Proof of payment of the administrative tax
- (d) Geodetic survey of the structure and the plot
- (e) Proof that the construction is in compliance with the building and planning regulations
- (f) Proof that the construction is safe in terms of seismic risk.

Classification of constructions in three categories, *in terms of safety*:

- (a) Those that are safe, and can acquire the use permit.
- (b) Those that need improvements; a reconstruction plan will be developed and implemented. This should be finished within a maximum of 5 years. By completion of the improvements a use permit will be issued.
- (c) Those that should be demolished (it is estimated that about 5% of the constructions will be demolished because they do not comply with the plan and the regulations; owners will be resettled).

Comment: It is worth mentioning that empowerment of ownership rights is not within the first priorities of this law. Emphasis is placed on the compilation of the detailed city plans and on the on-site controls for compliance with building and planning regulations and for seismic vulnerability. Legalization may only take place after fulfilment of the above and payment of all costs, taxes and fees; moreover, legalization should follow improvements if needed. It is estimated that 5% of the existing informal constructions must be demolished and people must be resettled in buildings that will be built by the state.

In terms of detailed safety controls, buildings may be classified into three categories according to their “main use”:

1. Residence,
2. Professional use, and
3. Professional use that requires special operation license.

Legalized property titles for individual single family houses may mention that no thorough technical safety control is accomplished; use permits may be offered for individual residences up to 2-3 floors after a brief visual inspection. Thorough technical safety controls may be accomplished according to the buyer's requirement prior to a future transaction. Property titles may be separated from operational licenses in case of building of commercial use; safety controls are needed both for commercial multi-family blocks of apartments built informally without a permit and for public and/or commercial buildings. In case such buildings have been built without a permit but under the supervision of an engineer, then the engineer may undertake to certify the stability of the construction.

In terms of proof for payment all taxes and fees, the same policy used for payment of transfer taxes may be used. If people cannot afford to pay such expenses these may be registered on the property register as an encumbrance. It is also important that government should take measures to increase stability in land policies and taxation in order to increase public trust. Then people may take benefit of the available funding mechanisms, obtain loans and try to improve their livelihoods (improve housing, education, business, health). Only then will people be able to cope with property taxes and communal fees.

➤ **Classification of constructions *in terms of planning*:**

In brief, government is considering the following methodology for solving the problem:

- Informal constructions *within the planned areas* are divided into 3 categories:
 - (a) Those who can be legalized but their owners don't intend to do so.
 - (b) Those whose owners have the intention to do so but are unable to.

(c) Those who are not qualified to be legalized.

Each category is addressed as follows:

- (a) Government proposes measures to enforce formalization, including: disconnection from utility networks and/or increase of property tax up to 5 times.
 - (b) Owners should pay to obtain a merged permit that includes both the building and the use/occupancy permit, as long as they provide a certificate of structural safety signed by a business organization licensed for construction.
 - (c) Such constructions may either be improved-if possible- or demolished.
- Informal constructions within the unplanned areas.
Such constructions cannot be legalized until the detailed plans will be prepared; such constructions will be legalised at a later stage. However, an on-site inspection is required to check the seismic vulnerability of the construction which will be considered by the planners for the compilation of the detailed plan. Such constructions will be taxed like those whose owners do not intend to legalize.

Comment: Planning and construction informalities may be treated optionally according to citizens' financial ability. Planning norms and standards may be readjusted to fit with the financial ability of the people so that communal fees will be reduced. Attention should be paid in the law so that the collected revenue will be reinvested in the municipalities. Some tasks that traditionally are in the responsibility of the municipalities may be transferred to the citizens in order to increase their interest and trust. Measures like disconnection from utility networks are not acceptable for several reasons, among others such measures will lower the living conditions of the people with damage to their health, and their children's health and education, etc. Unrealistic increase of taxes will not help if affordability problems exist. There is no reason why people in the unplanned areas should be taxed as if they don't intend to legalize. On the contrary buildings in such areas should be legalized quickly so that people will manage to improve their living and rural business by having access to the WB loans. Besides, according to the past policy these constructions were not considered illegal, as no construction or planning permit was needed.

Demolition is not appropriate once the house is occupied unless resettlement is offered. Demolition of 5% of the houses just because they do not fit in the plan is a waste of funds and energy, as many experts demonstrate tearing down a house may cause even more environmental damage. It is estimated by the authorities that approximately 20 M EUR will be needed with doubtful results in terms of resettlement. These 20 M EUR are expected as revenue from legalization. As mentioned above the estimated expected revenue is rather too optimistic.

➤ Classification of constructions **in terms of ownership**:

- Informal constructions built on personal private land.

- Informal constructions built on state or municipal land. In such cases two options are provided: (a) purchase of state or municipal land through a loan arrangement with foreign financial institutions or (b) long-term lease of land.

The collected fees will go to the state and/or local government according to their responsibility; 25% of that revenue will be used for demolition of the unacceptable buildings.

Comment: For those informal structures located on private land an arrangement should be made with the owner for a purchase of land; for those on state-owned land a parcel of land of reasonable size could be conveyed to the occupant of the structure, where practical, at an affordable price in case of first residence. If not considered practical to convert to private ownership a parcel of state-owned land another alternative would be to allow a long term lease of the property to the owner/occupant of the structure, otherwise the structure must be demolished. If the occupant already owns another residence, then a purchase of land should take place at its market value.

- By example, the estimated costs for an individual building (of ~130 m²) are:
 - Utilities (communal fees): 130 x 130 = 16,900 EUR for a household
 - Assessment of seismic and static stability of the facility: 500 EUR
 - Geodetic survey of the structure: 100 EUR
 - Issuing of the building and use permits: 120 EUR
 - Reconstruction of the seismically and statically unstable structures if necessary: 15,000 EUR

Purchase of the state, municipal land, in case that the facility was built on such land.

The average area of usurped land of approximately 300 m² x average value of 100 EUR/m² = 30,000 EUR

Owners are expected to get credit arrangement with the international financial institution with 20-year repayment period with interest rate of 5%.

- I. Without reconstruction
Number of household members (2 adults) - loan debt of 17,620 EUR with 20-year repayment period at interest rate of 5% = 115 EUR per month = 57 EUR per household member.
- II. With reconstruction
Number of household (2 adults) - loan debt of 32,620 EUR with 20-year repayment period at interest rate of 5% = 215 EUR per month = 107 EUR per household member.
- III. Without reconstruction but with purchase of land
Number of household members (2 adults) - loan debt of 47,620 EUR with 20-year repayment period at interest rate of 5% = 290 EUR per month = 145 EUR per household member.
- IV. With reconstruction and with purchase of land.
The cost becomes exorbitant.
- V. If energy improvements will also be required then the loans should be increased with another amount of 4,000 EUR.

Comment: Introducing so many expenses and expecting that owners will get credits for the next 30 years just to legalize the property means that probably there will be no chance for any additional mortgage to serve other purposes (e.g., education, health) for the citizens' well-being. Through a visit and an interview with an expert at the ERSTE Bank in Podgorica (a Croatian private bank) it was found that the bank gives two kinds of loans that are within the interests of this study: (a) housing loans and (b) home improvement loans. Both loans are given for legal houses only, plus some other prerequisites like: the client should work in a company that is in the bank's list (mainly state-owned companies, municipalities, public agencies and some good, stable private companies); the client should get his/her salary through the ERSTE bank. The loans have a pay-back period of 25 years depending on the age of the client and they refer to legal houses and /or flats. Such loans should be mortgage backed. Loans to purchase land for building a house are offered only if the client has acquired the building permit. There are only four banks in Montenegro that offer housing loans (ERSTE bank, NLB bank, Podgorica Societe General, and Commercial Bank Budva). This shows that it is unrealistic to believe that the banks will offer such loans for legalization to all Montenegrin citizens who have illegal houses and wish to legalize.

Much of the costs for the citizen can be reduced or should be postponed after legalization (e.g., acquiring a building and planning permit, seismic and static stability assessment and improvement, energy improvements). Constructions should be classified according to their main use and treated accordingly. According to the "Strategy 2008" text, only 5190 structures (out of a total of ~100,000) are expected to need reconstruction; as mentioned in 4.1.5., informal buildings classified as "residential" and/or "professional use that does not require a special license", the owners may be asked to adjust gradually to the new requirements, after legalization, and undertake the responsibility to provide the certificates (that cost 500 EUR) in any future transaction (when it may be required by a buyer, tenant, etc).

It is understood that a great many (mostly residential) structures in Montenegro are classified as "informal" in that they were built without state control in the permitting process and were not built according to controls as to structure, sanitation, water supply, earthquake standards, planning or environmental controls. It is considered advisable that as many of these structures as possible be formalized in the state registration/cadastral system as a benefit both to the state and to the owners. Their status would be regularized and the owners would enjoy the benefits of registration making it possible for an orderly marketing of properties as well as the process of mortgaging to improve their livelihoods, while the state will benefit in tax revenue.

It is proposed that single residential properties up to 2-3 floors whose owners hold provable claims to ownership be entered directly into registration and legalization (and access to mortgaging) with the provision that before properties could be sold or operational permits could be granted for change of use inspections must be performed to determine the suitability of the buildings according to appropriate structural, sanitary and environmental standards. By this method normal market operations will, in time, result in the upgrading of structures without a sudden financial burden upon owners thereby encouraging full participation in the

program, nor would the banking system of Montenegro be confronted with an instant demand for capital in excessive amounts as thousands of owners apply for financing support in order to meet the imperatives of an enforced regularization program through bank loans.

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APPENDIX A

Contract for the Sale and Purchas of Immovable Property

Entered into in Podgorica on the date of 7.06.2011

By and between:

Sea Colony d.o.o., from P. O. Box 217, 20000 Podgorica, Registration number 5-0317704, PIB number 02623374 represented by Natasa Zugic, personal identification number: 2201983215036, according to the enclosed power of attorney
(Hereinafter referred to as: **the Seller**)

and

Ognjen Bjeletic, personal identification number: 1601978213003, address: Atinska 6, Podgorica, e-mail address: ognjen.bjeletic@socgen.com, telephone number: +382 67 502 431
(Hereinafter referred to as: **the Buyer**)

(Hereinafter together referred to as: “the Parties”).

Article 1 The subject of this contract

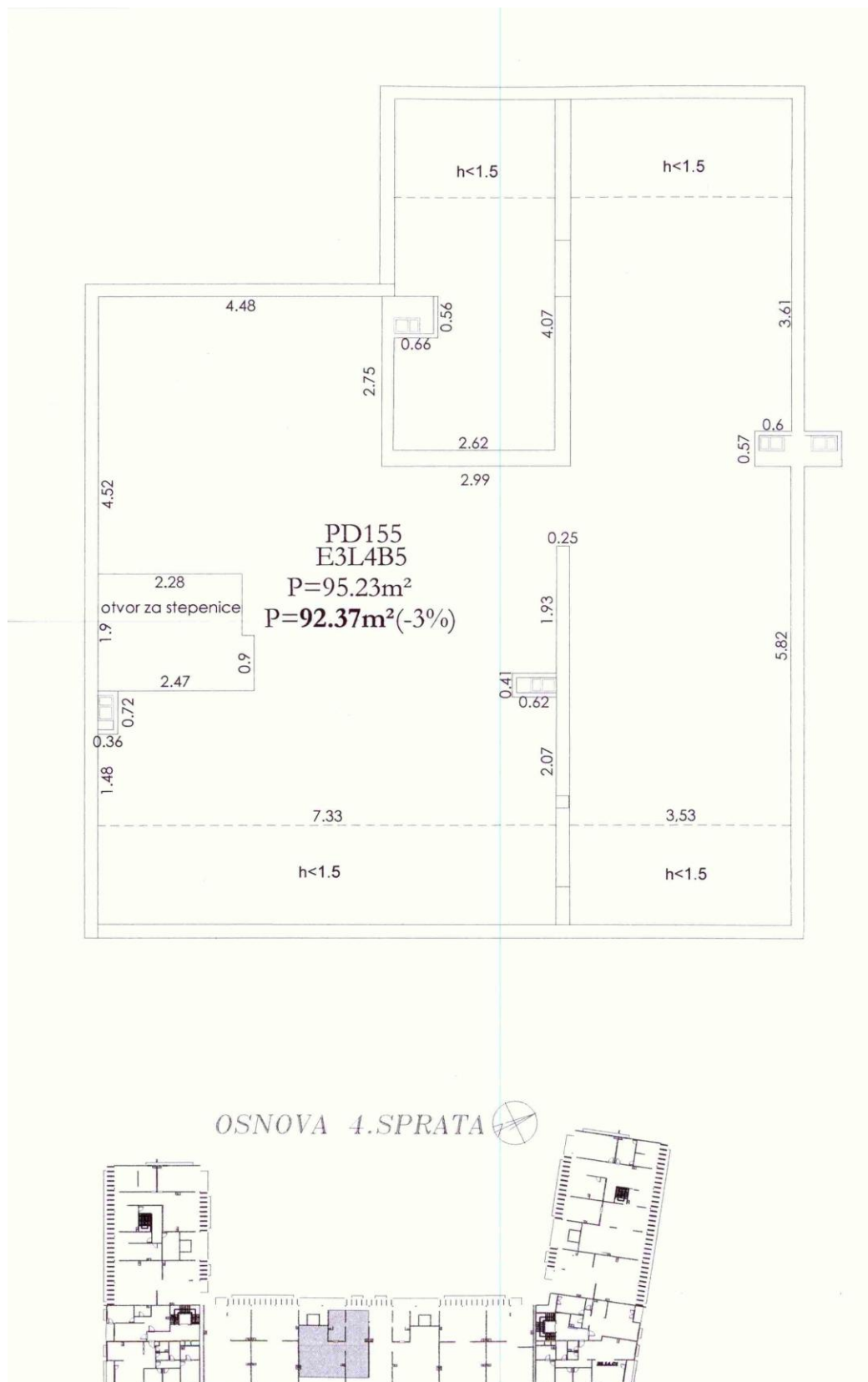
- 1.1 The subject of this contract is the purchase and sale of a residential space (Attic) marked by the Seller as **E3L4B5** with the usable area of 92.37 m2 according to the plan attached as Appendix 1, located on the fourth floor in entrance no. 3 above the residential unit E3L4B5 within the residential and business building located on urban parcel no. 84 within the scope of the DUP “Gornja Gorica 2” – amendments, in Podgorica, registered with the Real Estate Directorate of Podgorica, Extract number 4408, as well as the relative part of the common areas of the object which were not excluded to specific clients (Hereafter: "The attic").
- 1.2 The Buyer declares that he has purchased the residential unit known as E3L3B5 from Eurozox llc along with Mr. Pavle Bjeletic, and therefore intends to combine the attic to the mentioned apartment under its sole expense and risk and responsibility. It is clarified, that the Attic is being sold according to its position to this date (“AS IS”), i.e. without route and/or connection to the lower level known as E3L3B5 and without the Seller providing the finishing works to the attic, kitchen, bathroom, shower and/or other elements which do not exists in the on this date.
- 1.3 The Buyer confirms that he has visited the attic and the project and observed all parameters and specifications in the project and accepts the sale of the attic “AS IS”. It is clarified that the attic is being sold under this contract without the seller’s completion its construction except of the rough works. It may be completed by the buyer on his own risk and responsibility in accordance with the project documentation and the building permit, and on the expense of the Buyer. The buyer shall coordinate the works with the Seller and shall not make any harm the excavation and/or the foundation and/or the outer design of the project as well as shall not cause harm to any other part of the property and or to other third parties. It is also clarified, that the size of the attic was given according to the actual total surface area calculated according to the contour lines of this floor. The area described in article 1 has been calculated according to the status of the attic on the date of signing this contract. No

price reduction shall be made at any deviation of the internal area of the attic arises due to any works/changes/construction made in the attic by the Buyer.

Article 2

Guarantees of the parties

- 2.1 The seller, “Sea Colony” D.O.O a duly registered company in accordance with the Montenegrin Law is fully entitled to enter into this Contract.
- 2.2 The Seller guarantees to the buyer that it holds title for the land described in article 1.1. The Seller guarantees that it has obtained a building permit for the project from the date of 24.11.2008, and shall comply with all terms and conditions described within.
- 2.3 The Seller guarantees to the buyer to provide protection from eviction for the attics described under article 1.2 which is the result of its failures, and in case it occurs shall remove it on its own expense.
- 2.4 It is agreed that any layout and/or plan of the above properties and/or the project with connection to this Contract, have been provided for the purposes illustration only. The plans and the details might be subject to modifications by the Seller.
- 2.5 The Seller shall make any efforts to obtain permit of use for the project within a reasonable time from completion of the project, however, not later than two years from the date of signing the present contract. The project shall be considered as completed when the attic is ready for handing over procedure, and not when the permit of use is obtained.
- 2.6 The Buyer shall be responsible for all relevant expenses which occur after transfer of possession, and with regard to the attic and the relative share of the common areas such as water, electricity, sewage, heating, foul, vault charges, taxes, fees, maintenance of elevators etc, from the date of the transfer of possession and shall compensate the Seller for any damage and/or expenses at the case the payment shall be triggered on the Seller. The buyer’s obligation shall be with regard to the payments of to the relevant attic as well as the common areas such as stairs, hallways, elevators, routes and roads or any other common areas which are part of the project.
- 2.7 The guarantee to repair period for the attic shall be up to 2 years from the date of completion the construction works of the attic and shall refer only to the works preformed by this contract. The buyer shall not be entitled for any reimbursement or repairs of defects which are the result of intentional act of other party than the Seller and/or negligence and/or non proper use.
- 2.8 Annex A- Plan of the Attic



Article 3 Payment

- 3.1 The Parties agree that the total sale and purchase price for the attic referred to in Article 1 of the present contract amounts to **20,000 EUR**.
- 3.2 The total purchase price shall be within one day from the date of signing the present contract.
- 3.3 It is agreed that the payment of each installment of the purchase price shall be deemed to have been made on the date of arrival of the payment to the Seller's bank account as follows:

Banka: ERSTEBANK AD PODGORICA
 Name of beneficiary: SEA COLONY
 Account number: 540-1000032254171-26
 Address: Marka Miljanova 46, 81000 Podgorica

- 3.4 The buyer shall deposit the relevant amounts according to the installments' arrangement on the same dates as stated above at the Seller bank account.
- 3.5 In addition, without derogating the above, in case of delay with any of the payments, partly or whole of more than 7 calendar days, the Seller may immediately and/or any time later terminate this Contract by sending a written notice to the other party according to the address described by this contract. At such circumstances, the buyer shall be considered to have waived any rights and/or claims against the Seller and/or the attic. The attic which is the subject of this Contract shall be considered as the exclusive property of the Seller, nullifying any rights of the buyer. The Buyer shall not be entitled to receive back any amounts which have been paid to the Seller according to this agreement, as those payments shall be considered - agreed compensation for the seller damages and/or losses.

Article 4 Transfer of Possession

After the completion of the works in the project and subject to the payment of the entire contract price, the seller shall hand over the attic to the buyer according to hand over protocol to be signed by the parties. ("Transfer of Possession") It is agreed that the burden of risk for the property shall be transferred to the buyer immediately up on the date of providing the buyer with the possibility to possess the attic or three days from the date of the written notice, the earliest.

Article 5 Transfer of Title

- 5.1 Subject to the buyer's fulfillment of all its obligations with connection to this Contract, after recording the building in the Real Estate department and the identification of the different units in the project, the seller will provide the buyer's with confirmation that the buyer may transfer title on his name for the attic according to this contract, without any burdens on the title. It is clarified that ownership registration shall be made according to the Standards of Yugoslavia U.C2.100 2002 related to Calculation of surface area of objects in building construction.

- 5.2 Expenses regarding recording ownership on the name of the buyer shall be borne by the Buyer.

Article 6
Taxes and expenses

- 6.1 VAT for this contract at the case applicable shall be paid by the Seller according to the law.
- 6.2 Property Tax with connection to the attic and the relative share of the Real Estate shall be paid by the Buyer starting from the date of completion the construction. At the case, such taxes shall be trigger to the Seller, the Buyer shall compensate the Seller for any such payments.

Article 7
Miscellaneous

- 7.1 The Parties to the Contract have agreed that the eventual disputes and misunderstandings arising from this Contract regarding interpretation and execution of this Contract shall be solved by mutual agreement and in the spirit of good business cooperation. In case of failure, the dispute shall be resolved before the authorized Court in Podgorica, Montenegro.
- 7.2 The Contract will be signed and certified in the Court, thus, validating it. All amendments and additions to this Contract, if they arise, shall be made in writing and signed by both Parties and notarized.
- 7.3 The Buyer hereby confirms his understanding and acknowledgment that this agreement shall be binding up on it and his successors.
- 7.4 The Buyer shall comply in all respects with the provisions of all applicable laws and regulation and the requirement of any competent authority in relation to the project.
- 7.5 Any of the Seller's obligations according to this contract are subject to the prior fulfillment of the Buyer's obligations in accordance with this Contract.
- 7.6 This contract may not be assigned by the buyer without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.
- 7.7 Any notices sent to the Buyer according to address described in the first page of this contract shall be considered as received within one day at the case of an e-mail notice and 3 business days at the case of regular post mail, calculated from the date of the Seller's sending the notice.
- 7.8 The Contract is executed in 7 (seven) original copies of which two shall be presented to the Court of certification, one for the Real Estate Department, two copies for the Seller and the Buyer.

Ognjen Bjeletic

Sea Colony
by Natasa Zugic,
according to power of attorney

APPENDIX B

Law on the Treatment of Unlawful Constructions in the Republic of Macedonia

I. GENERAL PROVISIONS

1. Subject of the Law

Article 1

This Law shall regulate the requirements, the manner of, and the procedure for entering into the records, the establishment of the legal status and the sanctioning with regard to the unlawful constructions.

Article 2

(1) Unlawful constructions, in terms of this Law, shall be the facilities of importance for the Republic in accordance with the Law on Construction and another law, the facilities of local importance in accordance with the Law on Construction, and the facilities of health institutions for primary, secondary and tertiary health protection built without a construction approval or contrary to the construction approval, as well as parts (extensions and superstructures) of the facilities of importance for the Republic and of local importance and of the facilities of health institutions for primary, secondary and tertiary health protection built without a construction approval or contrary to the construction approval, within or outside the scope of the plan(hereinafter: unlawful constructions).

(2) Subject of this Law shall be the unlawful constructions referred to in paragraph (1) of this Article where, until the day of entry into force of this Law, the construction and installation activities are fully completed and which constitute a constructional and functional whole.

2. Establishing the legal status of an unlawful construction

Article 3

The entry of the unlawful construction into the public book for registering the rights over immovables and its inclusion in the urban planning documentation, in the manner and in the procedure determined by this Law, shall be considered establishment of the legal status of an unlawful construction.

3. Competent bodies

Article 4

(1) The procedure for establishing the legal status of an unlawful construction shall be conducted by the state administration body competent for performing activities in the field of spatial planning and the units of the local self-government.

(2) The state administration body competent for performing activities in the field of spatial planning shall conduct the procedure for establishing the legal status of the facilities of importance for the Republic in accordance with the Law on Construction or another law, of the facilities of health institutions for tertiary health protection and of the electronic communication networks and devices, while the units of the local self-government, of the facilities of local importance in accordance with the Law on Construction and of the facilities of the health institutions for primary and secondary health protection.

II. PROCEDURE FOR ESTABLISHING THE LEGAL STATUS OF AN UNLAWFUL CONSTRUCTION

1. Request for establishing the legal status

Article 5

(1) A request for establishing the legal status of an unlawful construction shall be submitted by the holder of an unlawful construction to the unit of the local self-government in the area of which the unlawful construction is built, i.e. the state administration body competent for performing activities in the field of spatial planning for the purpose of establishing the legal status of an unlawful construction.

(2) The time period for submission of the request for establishing the legal status shall be six months as of the day this Law enters into force.

(3) The form and content of the request for establishing the legal status of an unlawful construction referred to in paragraph (1) of this Law shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

2. Content of the request for establishing the legal status of unlawful constructions

Article 6

(1) A natural person-citizen of the Republic of Macedonia, a legal entity entered in the Central Register of the Republic of Macedonia and institutions being holders of unlawful constructions may submit a request for establishing the legal status. Foreign legal entities and natural persons may submit a request, provided that they meet the requirements for acquiring an ownership right determined by the Law on Ownership and Other Real Rights.

(2) The submitter of the request shall be obliged, together with the request for establishing the legal status of unlawful constructions of importance for the Republic, constructions of health institutions for primary, secondary and tertiary health protection, and constructions of local importance, except for the electronic communication networks and devices and linear infrastructure facilities, to submit:

- a citizenship certificate or copy from a personal identification card for a domestic natural person, i.e. a permanent residence permit for a foreign natural person, and for a domestic and foreign legal entity, an excerpt from the Central Register of the Republic of Macedonia, i.e. from the corresponding institution from the state wherein the legal entity has a head office,
- a proof for connection to utility infrastructure and/or bills for public utility services (electricity, water, and etc.), and if the unlawful construction does not have

infrastructure connections, a statement verified by a notary given under criminal and material liability by which the submitter of the request confirms that the unlawful construction is built before the entry into force of this Law, and

- a land survey report for establishing the factual condition of an unlawful construction with a property certificate for the land where the unlawful construction is built.

(3) If the unlawful construction is constructed on a land which is not in ownership of the submitter of the requestor the Republic of Macedonia, i.e. the land is in ownership of another natural person or legal entity, the submitter of the request, in addition to the proofs referred to in paragraph (2) of this Article, shall be obliged to submit a long-term lease agreement of the land concluded with the owner of the land.

(4) If the unlawful construction is built on a land transferred by a previous owner on the basis of a sale and purchase agreement, where the previous owner is recorded as an user, and the submitter of the request uses the land for more than 20 years as of the day of conclusion of the agreement, the submitter of the request shall be obliged, in addition to the proofs referred to in paragraph (2) of this Article, to submit a sale and purchase agreement of the land and a statement verified by a notary, given under criminal and material liability, by which the submitter of the request confirms that the submitter of the request or the person whose inheritor is the submitter of the request have bought the land from the previous owner.

(5) If the unlawful construction is built on a land without recorded rights, the competent body shall ex officio submit a request to the Agency for Real Estate Cadastre for conducting a corresponding procedure for recording the rights over the land in question, in accordance with the Law on the Real Estate Cadastre, and the Agency for Real Estate Cadastre shall conduct the procedure ex officio.

(6) If a request is submitted for establishing the legal status of an unlawful construction which is constructed on a land with unclear property relations, because an inheritance procedure is not conducted, the submitter of the request shall be obliged, in addition to the proofs referred to in paragraph (2) of this Article, to submit a notification from the notary -trustee of the inheritance court that an inheritance procedure for the land in question is in process.

(7) If a request for establishing the legal status of residential buildings for collective housing is submitted, the request shall have to be submitted by the association of residents or to be signed by more than half of the holders of apartments in the building wherefore, in addition to the proofs referred to in paragraph (2) of this Article, a list of the residents, the sale and purchase agreements for the apartments in the building, as well as a citizenship certificate or a copy of the personal identification card of all holders of apartments in the building shall be submitted. As for establishing the legal status of parts (extensions and superstructures) of residential buildings being unlawfully constructed, the holder of the unlawfully constructed part shall submit a request for establishing the legal status.

3. Content of the request for establishing the legal status of unlawful constructions which are linear infrastructure facilities

Article 7

For the purpose of establishing the legal status of unlawful constructions which are linear infrastructure facilities, the submitter of the request shall be obliged to submit the following together with the request for establishing the legal status:

- an excerpt from the Central Register of the Republic of Macedonia,
- a proof for finished construction activities or a certificate from the submitter of the request that the unlawful construction is built before the entry into force of this Law,
- a land survey report for establishing the factual condition of the unlawful construction, and

- property certificate or a certificate for resolved property relations for the land where the unlawful construction is built, issued by the state administration body competent for property matters.

4. Content of the request for establishing the legal status of an unlawfully constructed/installed electronic communication networks and devices

Article 8

(1) Only a legal entity entered in the Central Register of the Republic of Macedonia with a priority activity- telecommunication services may submit a request for establishing the legal status of an unlawfully constructed/installed electronic communication networks and devices.

(2) For the purpose of establishing the legal status of electronic communication networks and devices which are unlawfully constructed on a land, the submitter of the request shall be obliged to submit the following together with the request for establishing the legal status:

- an excerpt from the Central Register of the Republic of Macedonia,
- a statement verified by a notary, given under criminal and material liability, by which the submitter of the request confirms that the unlawful construction is built before the entry into force of this Law, and
- a land survey report for establishing the factual condition of the unlawful construction together with a property certificate for the land where the unlawful construction is built.

(3) For the purpose of establishing the legal status of the electronic communication networks and devices which are unlawfully installed on facilities, the submitter of the request shall be obliged to submit the following together with the request for establishing the legal status:

- an excerpt from the Central Register of the Republic of Macedonia,
- a statement verified by a notary, given under criminal and material liability, by which the submitter of the request confirms that the unlawful construction is built before the entry into force of this Law,
- a land survey report for determining the factual condition of the unlawful construction,
- a consent from 51% of the residents or from the association of apartment owners, if the electronic communication networks and devices are installed on a collective facility, i.e. from the owner, if they are installed on an individual facility, and
- an act on use or a property certificate for the facility where the electronic communication networks and devices are installed.

(4) After the receipt of the request for establishing the legal status of electronic communication networks and devices, the competent body referred to in Article 4 of this Law shall *ex officio* submit a request to the Agency for Electronic Communications for an opinion.

5. On-the-spot inspection

Article 9

(1) Following the receipt of the request for establishing the legal status of an unlawful construction, the commission formed by the minister heading the body competent for performing activities in the field of spatial planning, i.e. the mayor of the unit of the local self-government, shall determine the factual condition on the spot and shall prepare minutes regarding the conducted on-the-spot inspection with technical data for the unlawful construction and photographs thereof.

(2) The commission referred to in paragraph (1) of this Article shall be composed of employees in the municipality, i.e. state administration and it shall be composed of three members out of whom at least one graduated civil engineer.

(3) The form and the content of the minutes regarding the conducted on-the-spot inspection referred to in paragraph (1) of this Article shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

6. Suspension of the procedure

Article 10

(1) If any of the stated proofs is not submitted together with the request for establishing the legal status of an unlawful construction or the land where the unlawful construction is built has unrecorded rights, the competent body shall adopt a conclusion on suspension of the procedure within a time period of ten working days as of the day of receipt of the request and shall submit a notification to the submitter of the request for supplementing the request, i.e. shall submit a request to the Agency for Real Estate Cadastre for the purpose of conducting an appropriate procedure for entering of the rights over the land in question in accordance with the Law on Real Estate Cadastre, and the Agency for Real Estate Cadastre shall carry out the procedure *ex officio*.

(2) If a notification from a notary trustee of the inheritance court is submitted about an ongoing inheritance procedure for the land where the unlawful construction is built together with the request for establishing the legal status, the competent body shall adopt a conclusion on suspension of the procedure within a time period of ten working days as of receipt of the request.

(3) In case of submission of more conflicting requests for establishing the legal status of one unlawful construction by more submitters of requests, the competent body shall adopt a conclusion for suspension of the procedure within a time period of ten working days as of receipt of the request, and shall direct the submitters of the requests to a litigation procedure with a competent court.

(4) In case a request is submitted for establishing the legal status of unlawfully installed electronic communication networks and devices on a facility which does not have an act on use and is not entered in a property certificate, and a request for establishing the legal status is submitted for the facility, the competent body shall adopt a conclusion on suspension of the procedure within a time period of ten working days as of receipt of the request.

(5) The request may be supplemented after the expiry of the time period referred to in Article 5 paragraph (2) of this Law.

(6) In the case referred to in paragraph (1) of this Article, the procedure for establishing the legal status of an unlawful construction shall continue after supplementing the request, i.e. after conducting the procedure for entering the rights over the land in question, in the case referred to in paragraph (2) of this Article, following the delivery of a legally valid inheritance decision, in the case referred to in paragraph (3) of this Article, following the delivery of a legally valid court decision, and in the case referred to in paragraph (4) of this Article, following the adoption of a legally valid decision in the procedure for establishing the legal status of the facility where electronic communication networks and devices are installed.

7. Urban consent

Article 11

(1) The unit of the local self- government, i.e. the state administration body competent for performing activities in the field of spatial planning, within a time period of six months as of

the day of receipt of the request for establishing the legal status of an unlawful construction, i.e. as of the day of continuation of the procedure provided that it has been suspended, shall determine whether the requirements for inclusion of the unlawful construction in the urban planning documentation have been met and shall issue an urban consent or shall adopt a decision rejecting the request for establishing the legal status of an unlawful construction. The body of the state administration body competent for performing activities in the field of spatial planning shall issue an urban consent upon a prior opinion from the unit of the local self- government unit wherein the unlawful construction is built.

(2) The form and the content of the urban consent and the decision rejecting the request for establishing the legal status referred to in paragraph (1) of this Article shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

8. Requirements for issuance of an urban consent for unlawful constructions

Article 12

Urban consent for unlawful constructions of importance for the Republic, constructions of the health institutions for primary, secondary and tertiary health protection and constructions of local importance, except for electronic communication networks and devices and linear infrastructure facilities, shall be issued, if the following requirements are met:

- the request for establishing the legal status is submitted within the time period referred to in Article 5 paragraph (2) of this Law,
- minutes has been prepared for the conducted on-the-spot inspection in accordance with Article 9 of this Law,
- the unlawful construction has been built prior to the entry into force of this Law and it constitutes a constructional and functional whole,
- the unlawful construction is built on a land whereon the submitter of the request has the right of ownership or right of use, or on a land in ownership of the Republic of Macedonia, or on a land for which the submitter of the request has concluded a long-term lease agreement with the owner of the land, or on a land transferred from a previous owner on the basis of a sale and purchase agreement for which the previous owner is recorded as a user,
- the unlawful construction meets the geo-mechanical standards, provided that it is located in a potentially unstable zone for which a decision has been adopted in accordance with Article 25 of this Law,
- a consent by a competent body is granted, if the unlawful construction is located in the areas and zones referred to in Article 18 of this Law, and
- the unlawful construction may be included in the urban planning documentation in accordance with the standards referred to in Article 19 of this Law.

9. Requirements for issuance of an urban consent for unlawful constructions which are linear infrastructure facilities

Article 13

Urban consent for unlawful constructions which are linear infrastructure facilities shall be issued, if the following requirements are met:

- the request for establishing the legal status is submitted within the time period referred to in Article 5 paragraph (2) of this Law,
- minutes has been prepared for the conducted on-the-spot inspection in accordance with Article 9 of this Law,
- the unlawful construction is built prior to the entry into force of this Law,

- the unlawful construction is built on a land in ownership of the Republic of Macedonia or on a land for which a certificate for resolved property relations by the state administration body competent for property matters has been issued, and
- the unlawful construction may be included in the urban planning documentation in accordance with the standards referred to in Article 19 of this Law.

10. Requirements for issuance of urban consent for unlawfully constructed/installed electronic communication networks and devices

Article 14

(1) Urban consent for electronic communication networks and devices which are unlawfully constructed on a land shall be issued, if the following requirements are met:

- the request for establishing the legal status is submitted within the time period referred to in Article 5 paragraph (2) of this Law,
- minutes has been prepared for the conducted on-the-spot inspection in accordance with Article 9 of this Law,
- the electronic communication networks and devices are constructed prior to the entry into force of this Law and they constitute a construction and functional whole,
- the electronic communication networks and devices are constructed on a land over which the submitter of the request has the right of ownership or right of use or on a land in ownership of the Republic of Macedonia or on a land for which the submitter of the request has concluded a long-term lease agreement with the owner of the land,
- the electronic communication networks and devices meet the statics standards and the geo-mechanical standards as well, if they are located in potentially unstable zone for which a decision has been adopted in accordance with Article 25 of this Law,
- a positive opinion from the Agency for Electronic Communications has been obtained,
- a consent from a competent body has been granted, if the electronic communication networks and devices are located in the areas and the zones referred to in Article 18 of this Law, and
- the electronic communication networks and devices may be included in the urban planning documentation in accordance with the standards referred to in Article 19 of this Law.

(2) Urban consent for electronic communication networks and devices which are unlawfully installed on facilities shall be issued, if the following requirements are met:

- the request for establishing the legal status is submitted within the time period determined in Article 5 paragraph (2) of this Law,
- minutes has been prepared for the conducted on-the-spot inspection in accordance with Article 9 of this Law,
- the electronic communication networks and devices are installed prior to the entry into force of this Law and they constitute a construction and functional whole,
- a consent from 51% of the residents or from the association of apartment owners, if the electronic communication networks and devices are installed on a collective facility, i.e. from the owner, if they are installed on an individual facility,
- the facility on which the electronic communication networks and devices are installed has an act on use or is recorded in a property certificate or a legally valid decision for establishing the legal status of the facility on which they are installed is adopted,
- the electronic communication networks and devices meet the statics standards and the geo-mechanical standards as well, if they are located in potentially unstable zone for which a decision has been adopted in accordance with Article 25 of this Law,
- a positive opinion from the Agency for Electronic Communications has been obtained,
- a consent from a competent body has been granted, if the electronic communication networks and devices are located in the areas and the zones referred to in Article 18 of this Law, and

- the electronic communication networks and devices may be included in the urban planning documentation in accordance with the standards referred to in Article 19 of this Law.

Article 15

(1) If the municipality, i.e. the state administration body competent for performing activities in the field of spatial planning does not issue an urban consent, i.e. does not adopt a decision rejecting the request for establishing the legal status within the time period referred to in Article 11 paragraph (1) of this Law, the submitter of the request shall have the right, within a time period of three working days, to submit a request to the archives of the mayor of the municipality, i.e. to the archives of the minister heading the state administration body competent for performing activities in the field of spatial planning for the purpose of issuing an urban consent by the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning.

(2) The form and the consent of the request referred to in paragraph (1) of this Article shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

(3) A copy of the request referred to in Article 5 paragraph (1) of this Law shall be submitted by the submitter of the request together with the request referred to in paragraph (1) of this Article.

(4) The mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning shall be obliged, within a time period of five working days as of the day of submission of the request referred to in paragraph (1) of this Article, to issue an urban consent, i.e. to adopt a decision rejecting the request for establishing the legal status and to submit it to the archives of the mayor of the municipality, i.e. the archives of the minister heading the state administration body competent for performing activities in the field of spatial planning. In case the mayor, i.e. the minister does not have archives, the request shall be submitted to the archives in the head office of the competent body.

(5) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, does not issue an urban consent or decision rejecting the request for establishing the legal status, within the time period referred to in paragraph (4) of this Article, the submitter of the request may notify the State Administrative Inspectorate within a time period of five working days.

(6) The State Administrative Inspectorate shall be obliged, within a time period of ten days as of the day of receipt of the notification referred to in paragraph (5) of this Article, to conduct supervision in the municipality, i.e. in the state administration body competent for performing activities in the field of spatial planning for the purpose of determining whether the procedure has been conducted in accordance with law, and to notify the submitter of the request regarding the undertaken measures within a time period of three days as of the day of the completed supervision.

(7) Following the completed supervision in accordance with law, the inspector of the State Administrative Inspectorate shall adopt a decision obliging the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, to decide upon the submitted request, i.e. to issue an urban consent or to reject the request within a time period of ten days, and to notify the inspector regarding the adopted act. A copy of the act whereby it has been decided upon the submitted request shall be attached to the notification.

(8) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, fails to decide within the time period referred to in paragraph (7) of this Article, the inspector shall file a motion for initiation of a misdemeanor procedure for the misdemeanor anticipated by the Law on Administrative Inspection and shall determine an additional time period of five working days during which the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning shall decide upon the submitted request and shall notify the inspector regarding the adopted act within the same time period. A copy of the act whereby it has been decided upon the submitted request shall be attached to the notification. The inspector shall notify the submitter of the request regarding the undertaken measures within a time period of three working days.

(9) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide in the additional time period referred to in paragraph (8) of this Article, the inspector shall file a report to the competent public prosecutor within a time period of three working days and shall notify the submitter of the request regarding the undertaken measures in the same time period.

(10) If the inspector fails to act upon the notification referred to in paragraph (5) of this Article, the submitter of the request shall have the right to file an objection to the archives of the director of the State Administrative Inspectorate within a time period of five working days. In case the director of the State Administrative Inspectorate does not have archives, the request shall be submitted to the archives in the head office of the State Administrative Inspectorate.

(11) The director of the State Administrative Inspectorate shall be obliged, within a time period of three working days, to review the objection referred to in paragraph (10) of this Article and if he/she determines that the inspector failed to act upon the notification from the submitter of the request referred to in paragraph (5) of this Article and/or failed to file a report in accordance with paragraph (8) of this Article, the director of the State Administrative Inspectorate shall file a motion for initiation of a misdemeanor procedure for a misdemeanor anticipated in the Law on Administrative Inspection against the inspector, and shall determine an additional time period of five working days during which the inspector shall conduct supervision in the competent body for the purpose of determining whether the procedure has been conducted in accordance with law, and shall notify the submitter of the request regarding the undertaken measures within a time period of three days as of the day of the completed supervision.

(12) If the inspector fails to act in the additional time period referred to in paragraph (11) of this Article, the director of the State Administrative Inspectorate shall file a report to the competent public prosecutor against the inspector and shall notify the submitter of the request regarding the undertaken measures in a time period of three working days.

(13) In the case referred to in paragraph (12) of this Article, the director of the State Administrative Inspectorate shall immediately, and within a time period of one working day at the latest, authorize another inspector to conduct the supervision immediately.

(14) In the cases referred to in paragraph (13) of this Article, the director of the State Administrative Inspectorate shall inform the submitter of the request regarding the undertaken measures within a time period of three working days.

(15) If the director of the State Administrative Inspectorate fails to act in accordance with paragraph (11) of this Article, the citizen may, within a time period of eight working days, file a report to the competent public prosecutor.

(16) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning fails to act within the time period determined in paragraph (9) of this Article, the submitter of the request may initiate an administrative procedure with the Administrative Court.

(17) The procedure with the Administrative Court shall be urgent.

(18) Following the publication of the bylaw referred to in paragraph (2) of this Article in the “Official Gazette of the Republic Macedonia”, it shall be published on the web page of the Ministry of Transport and Communications, immediately and in a period of 24 hours at the latest.

Article 16

The state administration body competent for performing activities in the field of spatial planning shall be obliged, immediately following the issuance of the urban consent, to send a copy of it to the unit of the local self-government in whose area the unlawful construction is located.

11. Meeting the standards

Article 17

(1) The unlawful electronic communication networks and devices shall have to meet the static standards.

(2) All types of unlawful constructions except the linear infrastructure facilities which are located in potentially unstable zone for which the Council of the unit of the local self-government has adopted a decision in accordance with Article 25 of this Law, shall have to meet the geo-mechanical standards.

(3) For the purpose of meeting the standards referred to in paragraphs (1) and (2), the submitter of the request shall have to submit a basic project –phase statics.

12. Consent for establishing the legal status

Article 18

(1) If the unlawful construction is built in an area of a national park, park forest, natural park, natural monument in protected or recorded areas of strict and special nature reserves and protected areas (landscapes), in protected waterside areas of natural and artificial lakes and riverbeds, as well as in the first and second zone of sanitary protected springs of drinking water, the competent body referred to in paragraph (4) of this Law shall *ex officio* obtain consent from the Ministry of Environment and Physical Planning.

(2) If the unlawful construction is built in an area of archeological sites protected by law, as well as in an area declared as a monument, the competent body referred to in Article 4 of this Law shall *ex officio* obtain consent from the Cultural Heritage Protection Office.

(3) If the unlawful construction is built in an area where exploitation of mineral raw materials is performed or is planned to be performed, the competent body referred to in Article 4 of this Law shall *ex officio* obtain consent from the Ministry of Economy.

(4) If the unlawful construction is built in the protective zones of airports, the competent body referred to in Article 4 of this Law shall *ex officio* obtain consent from the Civil Aviation Agency.

(5) If the unlawful construction is built in border crossings zones in a radius of 100 meters from the border line, the competent body referred to in Article 4 of this Law shall *ex officio* obtain consent from the Ministry of the Interior and the Ministry of Defense.

(6) If the unlawful construction is built in an area anticipated by the urban plans for building infrastructure facilities and lines, as well as other facilities of public interest determined by law, the competent body referred to in Article 4 of this Law shall *ex officio* obtain a consent from the body responsible for the construction of infrastructure facilities and lines.

13. Standards for inclusion of unlawful constructions in urban planning documentation

Article 19

The minister heading the body competent for performing activities in the field of spatial planning shall prescribe the standards for inclusion of unlawful constructions in the urban planning documentation.

14. Charge for establishing the legal status

Article 20

(1) Following the issuance of the urban consent, the unit of the local self- government shall prepare a calculation for payment of the charge for establishing the legal status of an unlawful construction within a time period of five working days and shall submit it to the submitter of the request. The calculation with regard to the facilities that have been issued urban consent by the body competent for performing activities in the field of spatial planning shall be prepared in a time period of five days as of the day of receipt of the urban consent by the unit of the local self-government.

(2) The amount of the charge for establishing the legal status of the facilities intended for housing in apartment homes in accordance with the rulebook for the standards and norms for urban planning and electronic communication networks and devices shall be Denar 61,00 per square meter of the constructed area of the unlawful construction which is determined by the land survey report for establishing the factual condition of an unlawful construction.

(3) The amount of the charge for establishing the legal status of the unlawful constructions of local importance, except for the facilities referred to in paragraph (2) of this Article, and the amount of the charge for establishing the legal status of unlawful constructions of private and mixed-owned health institutions for primary, secondary and tertiary health protection shall be equal to the amount of the land development charge which is calculated in the procedure for obtaining construction approval for this type of facility, determined by the unit of the local self- government until the day this Law enters into force, taking into consideration the constructed area of the unlawful construction determined by the land survey report for establishing the factual condition of an unlawful construction.

(4) The charge for establishing the legal status of residential buildings for collective housing shall be paid by the holders of apartments in the residential building.

(5) The charge for establishing the legal status of an unlawful construction shall not be calculated and paid for the facilities of importance for the Republic in accordance with the

Law on Construction and another law, the facilities of the public health institutions for primary, secondary and tertiary health protection, as well as the linear infrastructure facilities in accordance with the Law on Construction.

(6) The submitter of the request may pay the charge for establishing the legal status of an unlawful construction within a time period of ten days as of the day of receipt of the calculation or may defer the payment and pay it in twelve monthly installments. If the payment of the charge is deferred, the submitter of the request shall be obliged to conclude a contract with the unit of the local self-government for deferred payment of the charge for establishing the legal status.

(7) The units of the local self-government shall be obliged to use the funds collected from the charge for establishing the legal status of an unlawful construction for designed purposes, that is, for adoption of urban planning documentation by which the unlawful constructions are included in the urban planning documentation and for infrastructural spatial planning of the area wherein they are located and shall be obliged to submit an annual report for the use of these funds to the state administration body competent for performing activities in the field of spatial planning.

(8) The submitters of the request referred to in Article 6 of this Law that are social security beneficiaries shall not pay a charge for establishing the legal status of an unlawful construction.

(9) If the unit of the local self- government fails to prepare a calculation for payment of the charge for establishing the legal status of an unlawful construction within the period referred to in paragraph (1) of this Article, the submitter of the request shall have the right to file an appeal to the state administration body competent for performing activities in the field of spatial planning.

(10) When deciding upon the appeal referred to in paragraph (9) of this Article, the state administration body competent for performing activities in the field of spatial planning shall determine a time period not longer than ten days for the unit of the local self- government to prepare a calculation for payment of the charge for establishing the legal status of an unlawful construction.

(11) If the unit of the local self-government fails to prepare a calculation for payment of the charge for establishing the legal status of an unlawful construction within the time period referred to in paragraph (9) of this Article, the state administration body competent for performing activities in the field of spatial planning shall prepare the calculation.

III. Decision for establishing the legal status

Article 21

(1) The decision for establishing the legal status of an unlawful construction shall confirm that the unlawful construction meets the requirements for inclusion in the urban planning documentation and entry into the public books for entering the rights over immovables.

(2) The decision for the facilities of importance for the Republic in accordance with the Law on Construction and another law, the facilities of the health institutions for tertiary health protection and the electronic communication networks and devices shall be adopted by the minister heading the state administration body competent for performing activities in the field of spatial planning, and for the facilities of local importance in accordance with the Law on

Construction and for the facilities of the health institutions for primary and secondary protection, by the mayor of the unit of the local self- government.

(3) The competent body referred to in paragraph (2) of this Article shall be obliged to adopt a decision for establishing the legal status of the facilities of local importance in accordance with the Law on Construction, the facilities of the private and mixed-owned health institutions for primary, secondary and tertiary health protection and the electronic communication networks and devices within a time period of five working day as of the day of delivery of a proof for paid charge for establishing the legal status of an unlawful construction or a contract for deferred payment of this charge, or a certificate that the submitter of the request is a beneficiary of social security, and for the facilities of importance for the Republic in accordance with the Law on Construction and another law, the linear infrastructure facilities in accordance with the Law on Construction and the facilities of the public health institutions for primary, secondary and tertiary health protection within a time period of five working days as of the day of issuance of the urban consent.

(4) The decision for establishing the legal status of an unlawful construction against which an appeal has not been filed, or has been once filed, shall represent a legal ground for entering the ownership right of the facility in the public book for entering the rights over immovables.

(5) In the course of entering the ownership right in the public book for entering the rights over immovables, it shall be noted that the facility has obtained the legal status in accordance with the Law on the Treatment of Unlawful Constructions.

(6) The form and the content of the decision for establishing the legal status of an unlawful construction referred to in paragraph (1) of this Article shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

Article 21-a

(1) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, fails to adopt a decision for establishing the legal status, i.e. fails to adopt a decision rejecting the request for establishing the legal status within the period referred to in Article 21 paragraph (3) of this Law, the submitter of the request shall have the right to submit a request within a time period of three working days to the archives of the mayor of the municipality, i.e. the archives of the minister heading the state administration body competent for performing activities in the field of spatial planning , in order for the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning to adopt a decision.

(2) The form and the content of the request referred to in paragraph (1) of this Article shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

(3) The submitter of the request shall submit a copy of the request referred to in Article 5 paragraph (1) of this Law together with the request referred to in paragraph (1) of this Article.

(4) The mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning shall be obliged, within a time period of five working days as of the day of submission of the request referred to in paragraph (1) of this Article to the archives of the mayor of the municipality, i.e. the archives of the minister heading the state administration body competent for performing activities in

the field of spatial planning, to adopt a decision for establishing the legal status or a decision rejecting the request for establishing the legal status. In case the mayor, i.e. the minister does not have archives, the request shall be submitted to the archives in the head office of the competent body.

(5) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, fails to adopt a decision for establishing the legal status or a decision rejecting the request for establishing the legal status within the time period referred to in paragraph (4) of this Article, the submitter of the request may notify the State Administrative Inspectorate within a time period of five working days.

(6) The State Administrative Inspectorate shall be obliged, within a time period of ten days as of the day of receipt of the notification referred to in paragraph (5) of this Article, to conduct supervision in the municipality, i.e. in the state administration body competent for performing activities in the field of spatial planning for the purpose of determining whether the procedure has been conducted in accordance with law, and to notify the submitter of the request regarding the undertaken measures within a time period of three days as of the day of the completed supervision.

(7) Following the completed supervision in accordance with law, the inspector of the State Administrative Inspectorate shall adopt a decision obliging the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, within a time period of ten days, to decide upon the submitted request, i.e. to adopt a decision for determining the legal status or to reject the request, and to notify the inspector regarding the adopted act. A copy of the act whereby it has been decided upon the submitted request shall be attached to the notification.

(8) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning, fails to decide within the time period referred to in paragraph (7) of this Article, the inspector shall file a motion for initiation of a misdemeanor procedure for the misdemeanor anticipated by the Law on Administrative Inspection and shall determine an additional time period of five working days during which the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning shall decide upon the submitted request and shall notify the inspector regarding the adopted act within the same time period. A copy of the act whereby it has been decided upon the submitted request shall be attached to the notification. The inspector shall notify the submitter of the request regarding the undertaken measures within a time period of three working days.

(9) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide in the additional time period referred to in paragraph (8) of this Article, the inspector shall file a report to the competent public prosecutor within a time period of three working days and shall notify the submitter of the request regarding the undertaken measures in the same time period.

(10) If the inspector fails to act upon the notification referred to in paragraph (5) of this Article, the submitter of the request shall have the right to file an objection to the archives of the director of the State Administrative Inspectorate within a time period of five working days. In case the director of the State Administrative Inspectorate does not have archives, the request shall be submitted to the archives in the head office of the State Administrative Inspectorate.

(11) The director of the State Administrative Inspectorate shall be obliged, within a time period of three working days, to review the objection referred to in paragraph (10) of this Article and in case the director determines that the inspector failed to act upon the notification of the submitter of the request referred to in paragraph (5) of this Article and/or failed to file a report in accordance with paragraph (8) of this Article, the director of the State Administrative Inspectorate shall file a motion for initiation of a misdemeanor procedure for a misdemeanor anticipated in the Law on Administrative Inspection against the inspector, and shall determine an additional time period of five working days during which the inspector shall conduct supervision in the competent body for the purpose of determining whether the procedure has been conducted in accordance with law, and shall notify the submitter of the request regarding the undertaken measures within a time period of three days as of the day of the completed supervision.

(12) If the inspector fails to act in the additional time period referred to in paragraph (11) of this Article, the director of the State Administrative Inspectorate shall file a report to the competent public prosecutor against the inspector and shall notify the submitter of the request regarding the undertaken measures in a time period of three working days.

(13) In the case referred to in paragraph (12) of this Article, the director of the State Administrative Inspectorate shall immediately, and within a time period of one working day at the latest, authorize another inspector to conduct the supervision immediately.

(14) In the cases referred to in paragraph (13) of this Article, the director of the State Administrative Inspectorate shall inform the submitter of the request regarding the undertaken measures within a time period of three working days.

(15) If the director of the State Administrative Inspectorate fails to act in accordance with paragraph (11) of this Article, the citizen may, within a time period of eight working days, file a report to the competent public prosecutor.

(16) If the mayor of the municipality, i.e. the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide within the time period determined in paragraph (9) of this Article, the submitter of the request may initiate an administrative procedure with the Administrative Court.

(17) The procedure with the Administrative Court shall be urgent.

(18) Following the publication of the bylaw referred to in paragraph (2) of this Article in the “Official Gazette of the Republic Macedonia”, it shall be published on the web page of the Ministry of Transport and Communications immediately and in a period of 24 hours at the latest.

IV. Appeal procedure

Article 22

(1) An appeal may be filed to the state administration body competent for performing activities in the field of spatial planning against the decision of the mayor of the unit of the local self-government for establishing the legal status of an unlawful construction and rejection of the request for establishing the legal status of an unlawful construction, within a time period of 15 days as of the day of receipt of the decision.

(2) An appeal may be filed to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision of the minister heading the state administration body competent for performing activities in the field of spatial planning, for the purpose of establishing the legal status of an unlawful construction or rejecting the request for establishing the legal status of an unlawful construction, within a time period of 15 days as of the day of receipt of the decision.

(3) The state administration body competent for performing activities in the field of spatial planning shall be obliged to decide upon the filed appeal within a time period of 45 days as of the day of receipt of the appeal.

Article 22-a

(1) If the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide upon the filed appeal within the time period referred to in Article 22 paragraph (3) of this Law, the appellant may notify the State Administrative Inspectorate within a time period of five working days. The form and the content of the notification referred to in this paragraph shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

(2) The State Administrative Inspectorate shall be obliged, within a time period of ten days as of the day of receipt of the notification referred to in paragraph (1) of this Article, to conduct supervision in the Ministry of Transport and Communications for the purpose of determining whether the procedure has been conducted in accordance with law, and notify the submitter of the request regarding the undertaken measures within a time period of three working days as of the day of the completed supervision.

(3) Following the completed supervision in accordance with law, the inspector of the State Administrative Inspectorate shall adopt a decision obliging the minister heading the state administration body competent for performing activities in the field of spatial planning, within a time period of ten working days, to decide upon the filed appeal, i.e. to accept or reject the appeal, and to notify the inspector regarding the adopted act. A copy of the act whereby it has been decided upon the filed appeal shall be attached to the notification.

(4) If the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide within the time period referred to in paragraph (3) of this Article, the inspector shall file a motion for initiation of a misdemeanor procedure for the misdemeanor anticipated by the Law on Administrative Inspection and shall determine an additional time period of five working days during which the minister heading the state administration body competent for performing activities in the field of spatial planning shall decide upon the submitted appeal and shall notify the inspector regarding the adopted act within the same time period. A copy of the act whereby it has been decided upon the submitted appeal shall be attached to the notification. The inspector shall notify the appellant regarding the undertaken measures within a time period of three working days.

(5) If the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide in the additional time period referred to in paragraph (4) of this Article, the inspector shall file a report to the competent public prosecutor within a time period of three working days and shall notify the appellant regarding the undertaken measures in the same time period.

(6) If the inspector fails to act upon the notification referred to in paragraph (4) of this Article, the submitter of the request shall have the right to file an objection to the archives of the

director of the State Administrative Inspectorate within a time period of five working days. In case the director of the State Administrative Inspectorate does not have archives, the request shall be submitted to the archives in the head office of the State Administrative Inspectorate.

(7) The director of the State Administrative Inspectorate shall be obliged, within a time period of three working days, to review the objection referred to in paragraph (6) of this Article and in case the director determines that the inspector has failed to act upon the notification of the submitter of the request referred to in paragraph (4) of this Article and/or has failed to file a report in accordance with paragraph (5) of this Article, the director of the State Administrative Inspectorate shall file a motion for initiation of a misdemeanor procedure for a misdemeanor anticipated in the Law on Administrative Inspection against the inspector, and shall determine an additional time period of five working days during which the inspector shall conduct supervision in the competent body for the purpose of determining whether the procedure has been conducted in accordance with law, and shall notify the appellant regarding the undertaken measures within a time period of three days as of the day of the completed supervision.

(8) If the inspector fails to act in the additional time period referred to in paragraph (7) of this Article, the director of the State Administrative Inspectorate shall file a report to the competent public prosecutor against the inspector and shall notify the appellant regarding the undertaken measures in a time period of three working days.

(9) In the case referred to in paragraph (12) of this Article, the director of the State Administrative Inspectorate shall immediately, and within a time period of one working day at the latest, authorize another inspector to conduct the supervision immediately.

(10) In the cases referred to in paragraph (9) of this Article, the director of the State Administrative Inspectorate shall inform the appellant regarding the undertaken measures within a time period of three working days.

(11) If the director of the State Administrative Inspectorate fails to act in accordance with paragraph (7) of this Article, the citizen may, within a time period of three working days, file a report to the competent public prosecutor.

(12) If the minister heading the state administration body competent for performing activities in the field of spatial planning fails to decide within the time period determined in paragraph (5) of this Article, the submitter of the request may initiate an administrative procedure with the Administrative Court.

(13) The procedure with the Administrative Court shall be urgent.

(14) Following the publication of the bylaw referred to in paragraph (2) of this Article in the “Official Gazette of the Republic Macedonia”, it shall be published on the web page of the Ministry of Transport and Communications, immediately and in a period of 24 hours at the latest.

V. Purchase of a land in ownership of the Republic of Macedonia where an unlawful construction is built

Article 23

(1) The holders of unlawful constructions built on a land in ownership of the Republic of Macedonia, as well as on the land on which the submitter of the request has a right of use, and for which a decision for establishing the legal status has been issued, on the basis of which the unlawful construction has been entered in the public book for entering the rights over immovables, shall be obliged, within a time period of six months as of the adoption of the urban planning documentation by which the unlawful construction has been included, to submit a request for purchase of the construction land in ownership of the Republic of Macedonia to the state administration body competent for performing activities in the field of spatial planning.

(2) If the holders do not act in accordance with paragraph (1) of this Article, the long-term lease of the construction land where the facility is constructed shall be determined *ex officio* in the manner and under the conditions determined by the Law on Privatization and Lease of Construction Land in State Ownership.

VI. Removal of unlawful constructions

Article 24

(1) The unlawful constructions which do not meet the requirements for issuance of an urban consent, i.e. for which a decision rejecting the request for establishing the legal status is adopted shall be removed in accordance with the Law on Construction.

(2) If it is determined that, following the submission of the request for establishing the legal status, extensions and superstructures are constructed on the unlawful construction for which the request is submitted, a decision rejecting the request for establishing the legal status shall be adopted, regardless of whether the unlawful construction meets the requirements for establishing the legal status of an unlawful construction.

VII. Decision for potentially unstable zone

Article 25

Provided that there are potentially unstable zones on the area of the unit of the local self-government, the Council of the municipality shall be obliged to adopt a decision determining the boundaries of these zones.

VIII. Register of submitted requests for establishing the legal status of unlawful constructions

Article 26

(1) The units of the local self-government and the state administration body competent for performing activities in the field of spatial planning shall keep a Register of Submitted Requests for Establishing the Legal Status of Unlawful Constructions.

(2) The units of the local self government shall submit a copy of the Register referred to in paragraph (1) of this Article to the state administration body competent for performing activities in the field of spatial planning, within a time period of 15 days as of the day of expiry of the time period for submission of a request for establishing the legal status referred to in Article 5 paragraph (2) of this Law.

(3) The form and the content of the Register referred to in paragraph (1) of this Article shall be prescribed by the minister heading the state administration body competent for performing activities in the field of spatial planning.

IX. Supervision

Article 27

The state administration body competent for performing activities in the field of spatial planning shall conduct the supervision over the implementation of the provisions of this Law and the regulations adopted on the basis of this Law.

X. Misdemeanor provisions

Article 28

(1) Fine in the amount of Euro 1.000 to 2.000 in Denar counter value shall be imposed for a misdemeanor on the responsible person and the official person in the unit of the local self-government, if he/she:

- does not issue an urban consent, i.e. does not adopt a decision rejecting the request for establishing the legal status of an unlawful construction within the time period determined in Article 11 paragraph (1) of this Law,
- does not prepare a calculation for payment of the charge for establishing the legal status of an unlawful construction within the time period referred to in Article 20 paragraph (1), and
- does not adopt a decision for establishing the legal status of an unlawful construction within the time period determined in Article 21 paragraph (3) of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter value shall be imposed for a misdemeanor on the responsible person and the official person in the body competent for performing activities in the field of spatial planning, if he/she:

- does not issue an urban consent, i.e. does not adopt a decision rejecting the request for establishing the legal status of an unlawful construction within the time period determined in Article 11 paragraph (1) of this Law, and
- does not adopt a decision for establishing the legal status of an unlawful construction within the time period determined in Article 21 paragraph (3) of this Law.

(3) Fine in the amount of Euro 2.000 to 3.000 in Denar counter value shall be imposed for a misdemeanor on the responsible person in the unit of the local self government, provided that the unit of the local self government fails to submit an annual report regarding the use of the funds from the charge for establishing the legal status of the unlawful constructions to the state administration body competent for performing activities in the field of spatial planning and/or is determined that it uses these funds contrary to Article 20 paragraph (7) of this Law.

Article 29

The competent court shall be a competent body for imposing the misdemeanor sanctions referred to in Article 28 of this Law.

XI. Transitional and Final Provisions

Article 30

The units of the local self-government shall be obliged to adopt the urban planning documentation by which the unlawful constructions are included in a time period not longer than five years as of the day the decision for establishing the legal status becomes final.

Article 31

The procedures for removal of the facilities of importance for the Republic in accordance with the Law on Construction and another law and the facilities of local importance in accordance with the Law on Construction, as well as the administrative and court (criminal) procedures in connection with construction of unlawful constructions with the stated intention, initiated prior to entry into force of this Law, shall be suspended on the day this Law enters into force.

Article 32

(1) The regulations determined by this Law shall be adopted within a time period of 30 days as of the day this Law enters into force.

(2) The units of the local self-government shall be obliged to adopt the decision referred to in Article 25 of this Law within a time period of 15 days as of the day this Law enters into force.

Article 33

This Law shall enter into force on the eight days of its publication in the “Official Gazette of the Republic of Macedonia”, and shall be valid for a time period of six years as of the day of entry into force.

PROVISIONS OF ANOTHER LAW:

Law Amending the Law on the Treatment of Unlawful Constructions (“Official Gazette of the Republic of Macedonia” no.54/2011):

Article 8

The bylaws anticipated by this Law shall be adopted within a time period of 15 days as of the day this Law enters into force.

Law Amending the Law on the Treatment of Unlawful Constructions (“Official Gazette of the Republic of Macedonia” no.54/2011):

Article 9

The provision referred to in Article 6 paragraph 1 of this Law amending Article 22 paragraph (2) of this Law, shall start to apply as of the day of commencement of the application of the Law on the Establishment of the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance.