

UNECE

**Webinar: Informal Settlements: Formalization and Build Back Better
Projects**

**Ministry of Spatial Planning, Urbanism and State Property
Montenegro**



**Formalization of illegal structures in
Montenegro**

Radmila Lainović
Directorate for Housing

INFORMAL CONSTRUCTION

In previous period (more than 40 years) Montenegro has been faced with the issue of informal construction of buildings of different types, areas and purposes. This construction permanently changes and destroys the space and directly reduces both current and future development possibilities. The number of buildings built contrary to regulations is measured in the tens of thousands



Informal construction: Podgorica, Kakaricka gora

This phenomenon causes large-scale consequences: planning and urban disorganization of the area, insufficient infrastructural equipment of the treated area, low quality of life, endangerment of ecological standards and risk to human health, seismic risks and inability to collect utilities and taxes.

Informal construction often implies the illegal appropriation of the right to dispose of and use land, and the avoidance of payment of compensation for various forms of use of public infrastructure, which shifts the costs to those actors who build and work in accordance with the law.

Number and structure of illegally built buildings

- Unfortunately, we don't have exact data about the number of informal objects, but according to indirect data sources, such as the number of electrical and water supply connections, Cadastral data as well, it can be concluded that in Montenegro at least 70 000 (thousand) illegally built objects exist. Most of them are concentrated in small and medium settlements throughout the country. Informal structures are located on all types of land – private and state land, they vary in terms of standards—we have slums and luxury residences, objects are built on different locations— from protected areas and city cores to suburban areas, different uses—housing and commercial, and very diverse sizes – from small housing units to large condominium buildings.
- Part of the building that was built contrary to the building permit is considered as an illegal building - upgrading and extension of existing buildings is a very common form of informal construction, which is more difficult to control and hard to determine the number of these objects.

LEGALIZATION PROCESS

The legalization process of illegal structures began with the entry into force of the Law on Spatial Planning and Construction of Facilities in 2018, and furtherly improved by the adoption of a set of amendments from August 2020.

Local governments are responsible for conducting the legalization procedure.

According to the data from December 2023, over 56,000 requests for legalization of illegally constructed buildings were submitted in Montenegro, and more than 47,000 requests for legalization were processed. So far, about 3000 buildings are legalized.

This is complex process which implies the active participation of the illegal builders themselves, the preparation of technical documentation and the payment of fees, which affects the dynamics and efficiency of the procedure.

Main challenges of the legalization process are:

- ❖ Insufficient number of spatial plans
- ❖ Poor utility infrastructure
- ❖ Lack of adequate social and public institutions in the informal settlements
- ❖ the amount of legalizations fees in relation to the average salaries.

Conditions to be met in order to issue a decision on legalization

In order to legalize Illegal object, it must fulfill the following general conditions:

- ❖ that it can be identified on an ortho photo - aerial shot (2018),
- ❖ that it is registered in the real estate Cadastre and all legal relations/issues which concern property on the land and building should be resolved,
- ❖ That it was not built on an area designated by the planning document for the construction of infrastructure and other facilities of general/public interest,
- ❖ that it was built in accordance with the basic parameters or guidelines of the valid planning document

Regulations defining the area of illegal/informal construction

State regulations

- Law on Spatial Planning and Building Construction ("Official Gazette of Montenegro", no. 64/2017, 44/2018, 63/2018, 11/2019 - correction, 82/2020 and 86/2022).
- Rulebook on forms of requests, statements and reports in the procedure of legalization of illegal buildings ("Official Gazette of Montenegro", number 92/20),
- Rulebook on the method of testing, the method of preparation and the content of the analysis of static and seismic stability of an illegal building with an area of up to 500m² ("Official Gazette of Montenegro", number 84/17)

Municipal level regulation

- Decisions on the amount, conditions, method, terms and procedure of payment of compensation for urban rehabilitation (upon prior approval of the Government of Montenegro),
- Decisions on the amount, method and criteria of payment of the annual fee for the use of space (upon prior approval of the Ministry)
- Decisions on provision of alternative accommodation (upon prior approval of the Ministry)
- Urban rehabilitation program.

Initiation of legalization procedure - request

The process of legalization of an illegal object is initiated by submitting a request for legalization to the local government body responsible for legalization in the municipality where the informal structure is built.

The following shall be submitted with the application:

- ❖ survey of the illegal building prepared by a licensed geodetic organization and certified by the Cadaster;
- ❖ photos of all facades of the illegal building;
- ❖ the report of the auditor, in which the auditor claims/declares that an illegal building is on the ortho-photo - air shot and that this illegal building is built in accordance with the basic urban planning parameters or in line with the guidelines of the valid planning document,
- ❖ an extract from the real estate cadaster or other appropriate real estate records.

The request can be submitted by the owner of the illegal building and the condominium owner, and the assembly of condominium owners of the illegal building, and each request is published on the website of the competent local government body.

The procedure and the purchase of state-owned land

- If the area on which the illegal building was built is not covered by the planning document, or the issue of ownership of the land has not been resolved, the legalization procedure is terminated.
- The transfer of property rights on the land on which the illegal building was built, on which ownership authority is exercised by the state or local self-government unit, is carried out by direct contract, in accordance with the law of State Property, based on the request of the owner of the illegal building who submitted an application for legalization - land buyer.
- The value of the land determined in the direct negotiation procedure can be repaid in a maximum of 240 equal monthly installments for illegal buildings of primary residence, and for other illegal buildings in a maximum of 120 equal monthly installments, in accordance with the contract, with securing claims.

Urban rehabilitation fee

- The owner of an illegal building is obliged to pay a fee for urban rehabilitation, which is the equivalent of a fee for communal equipment of construction land.
- The competent authority of the local self-government unit is obliged to prescribe the conditions, method, terms and procedure of payment of compensation for urban rehabilitation, with the prior consent of the Government of Montenegro.
- The amount of compensation is determined depending on the zone, the level of development of the construction land, the average costs of equipping the construction land, the costs of measures for urban rehabilitation of areas devastated by illegal construction, the method of payment of the established amount of compensation and the type and purpose of the facility.
- For buildings of primary residence, the fee is paid in equal monthly installments, specified in the request of the owner of the illegal building, and a maximum of 240 monthly installments.
- For other illegal objects, compensation is paid in equal monthly installments, specified in the request of the owner of the illegal object, and at most in 120 monthly installments.
- Security of claims based on the payment of compensation in installments is established on the facility for which the compensation is calculated.

Harmonizing the external appearance of the building with the guidelines of the planning document or City Architect - final procedure

- When the owner of an illegal building receives a decision on the legalization of the building, the cadaster is obliged to record that information in the cadastre as a public record.
- The last stage of the legalization procedure is the procedure of harmonizing the external appearance of the building with the guidelines of the planning document or City Architect.
- City Architect is responsible for this procedure.
- Based on the act of the city architect, the note from the real estate register that the building was built illegally is deleted, and that is the final procedure.

Use of the space Fee

- The Law also defines the method of „encouraging“ illegal builders to register their buildings and complete the legalization process, and it refers to prescribing fees for the use of space for buildings that are not in the process of legalization.
- The competent body of the local administration is obliged to carry out the procedure for collecting this fee. This body is obliged to overlap the data from the ortho-photo and the received requests for legalization and systematize and establish a LIST of illegal buildings for which no request for legalization has been submitted, or which have not been fulfilled the requirements for legalization in accordance with the Law;
- Local government body determines the amount of the annual fee by its decision
- The annual fee for the use of space per m² of an illegal building can be from 0.5% to 2.0% of the average construction price per m² of a newly built residential building in Montenegro, published by the administrative body responsible for statistics, for the year preceding the year for which the fee is determined .
- Unfortunately, only one municipality enforces the collection of this fee and that is one of the reasons why there are few legalization decisions.
- Another reason is the lack of planning documentation

Alternative accommodation and purpose and use of funds collected in the process of legalization

- Objects that cannot be legalized in accordance with the Law will be demolished.
- The local self-government unit is obliged to provide alternative housing to the owner of the illegal primary residence and members of his family household in case of removal of the illegal primary residence.
- Alternative accommodation is provided by renting out an apartment, providing rent compensation and in other ways, in accordance with the regulation of the local self-government unit.
- The local self-government unit is obliged to use the funds generated from the a fee for urban rehabilitation and the fee for the use of space for the communal equipment of the construction land and to provide alternative accommodation.

Thank you!