



## **Corruption in spatial planning and development**

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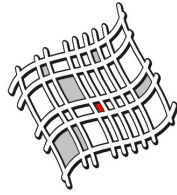
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# **CORRUPTION**

in Spatial Planning and Development

Case Study Montenegro

September 2005.

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## **PREFACE**

Looking globally, the overall turnover in the construction industry is 3,200 billion dollars a year, which makes it very attractive for the organized crime structures. As for Montenegro, public largely fears that the money taken out of the country during the transition process is coming back and is laundered through construction of objects by the transition "winners". That is at the same time the reason why those who dare speak about corruption in the construction industry are very rare.

During the last years, construction of residential/business objects in Montenegro has been in expansion: multi-storey buildings are mainly constructed without construction license or inspection certificate, while space and environment are illegally destroyed. In the ecological state whose main developmental strategy is tourism, illegal construction significantly reduces tourist potentials and impedes their full development. The official data are not published, but it is estimated that in the last decade around 80% of objects have been illegally built.

As a rule, market in the construction industry does not represent a regulatory mechanism that enables quality. Instead, the state must establish a strong control in order to ensure fulfillment of standards. In case of Montenegro, it is obvious that the state itself creates and encourages illegal construction through connecting objects to technical infrastructure or their legalization by means of changes and amendments of plans and selective enforcement of regulations.

Unclear and imprecise norms in the legislation and broad discretionary powers institutionalize corruption as the most efficient way of operations in the construction industry. The process of planning and developing space is basically controlled by clans that have an obvious influence on the decision-makers on the highest level. Non-transparent processes, along with the lack of public control of the work of institutions and individual responsibility create a favorable ground for strengthening of the informal centers of power and unhindered furthering of their interests, sometimes at the expense of flagrant violation of human rights.

Through a series of examples that illustrate the situation in Montenegro, this study is aimed at pointing to causes, consequences and possible forms of corruption in planning and developing space. The following topics have been dealt with: process of developing plans; issuing construction licenses and inspection certificates; construction and reconstruction of objects; selling, buying and exchange of construction land; illegal construction; organized crime and money laundering in the construction industry.

This book was presented at the 58<sup>th</sup> Annual Conference of the United Nations (UN) that precedes the General Assembly of UN<sup>1</sup>. It is based on the research<sup>2</sup> carried out during 2004 and 2005 within the projects funded by the United Nations Development Program (UNDP), USAI/ORT and the Balkan Trust for Democracy. Most of the research was carried out on a voluntary basis.

We hope that this study will contribute to the awareness on the significance of fighting corruption in the construction industry and be a good starting point for the authorized institutions to sanction the existing cases and prevent future ones.

Vanja Calovic  
MANS

**Views expressed in this study reflect the author's standpoint  
and do not necessarily overlap with the views of any of the donors.**

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<sup>1</sup> 58<sup>th</sup> Annual UNDP/NGO Conference, Our Challenge: Voices for Peace, Partnerships and Renewal, UN, New York, 7-9 September 2005

<sup>2</sup> Data collected through public hearings, debates with citizens in all the municipalities of Montenegro, citizen's information on corruption and their appeals, focus groups in the municipalities of Podgorica and Budva, analysis of documents obtained from citizens and institutions, consultations with experts, representatives of state institutions, international organizations and media, study visits and analyses of experiences of other countries, analyses of information from print media and web sites of public institutions.

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## 1. SYSTEM OF SPATIAL PLANING AND DEVELOPMENT IN MONTENEGRO

System of spatial planning and development in Montenegro is defined by the Low on Spatial Planning and Development where plans are classified as state and local planning documents.

Ministry for Spatial Planning and Development is responsible for development of state planning documents that are adopted by the Parliament of Montenegro. Local governments are responsible for development of local plans that are later adopted by the local parliaments. Classification of the planning documents by their hierarchy is provided in the table below:

State planning documents	Local planning documents
<ul style="list-style-type: none"> <li>- Spatial plan of the Republic</li> <li>- Spatial plan of areas for special purposes</li> <li>- Detailed spatial plan</li> <li>- Location study</li> </ul>	<ul style="list-style-type: none"> <li>- Spatial plan of the municipality</li> <li>- General town plan (GTP)</li> <li>- Detailed town plan (DTP)</li> <li>- Project design</li> <li>- Local location study</li> </ul>

Planning documents of the smaller areas must be in compliance with the planning documents treating a wider territory. In cases where incompatibility exists, the plan of the wider area is the valid one.

### Key laws and their jurisdiction:

#### Law on Spatial Planning and Development

- basics of the spatial planning and development,
- types, content and procedure of development and adoption of plans;
- criteria for plans development and implementation;
- supervision over the enforcement of law;
- other issues related to spatial planning and development.

#### Law on Construction

- construction and reconstruction of the objects;
- demolition of objects due to their poor condition and level of damage.

#### Law on Construction Land

- development of the construction land;
- town construction land;
- fees for development and use of land.

#### Law on Local Self-Governance

- mechanisms for citizens' participation in decision making processes;
- transparency of the local government;
- cooperation between NGOs and local governments;
- procedures in communication with citizens.

### Process of adoption of new or changing the existing plans is carried out through several phases as follows:

#### Decision on development of the plan

(issued by the Ministry or Mayor)

#### Selection of a plan developer

(through a public tender)

#### Submitting the plan for revision

to responsible ministries, institutions and public companies

#### Expert assessment of the plan

(for state plans - Council for Spatial development ; for local plans – Commission or legal entity appointed by the Mayor)

#### Development of the draft plan

#### Public hearings on the draft plan

#### Expert opinion on the draft plan

#### Development of the plan proposal

#### Submitting the plan to the Ministry for approval

(assessment of compatibility with plans of higher order and with provisions of the Law)

#### Adoption of plan

(Parliament of Montenegro or local parliaments)



## 2. PLAN DEVELOPMENT PROCESS

### 2.1 Decision on Plan Development

The Process of plan development starts with the decision on drafting plan documents that are reached by the Government or Mayor, based on the Program of the Spatial Planning and Development that is adopted by Republic Parliament, Government and local parliaments<sup>3</sup>. The Law on Spatial Planning and Development defines that the decision shall be published in a printed media, as well as on the site of the Ministry or a local government.

Decision on development or adjustment of the plan must be based on Program that is created by the Mayor through the Report on spatial status and development of the Draft Programme

In that manner he can dictate the pace of development of certain city/town areas. In this way he/she can enable or prevent realization of interests of land owners or interested investors. This discretionary power, set on such a wide basis, by its very definition makes the function of the Mayor very susceptible to corruption.

An integral part of the decision on plan development is a program task that defines more closely requests and needs of the users of space. According to the new law, the decision and the tender task are transparent and anyone can have an insight into them and submit their comments.

Local governments most often publish their documents in the Official Gazette for municipal regulations and these are read by a very small number of citizens, so that they are basically not informed about the plans of a municipality. Thus, they do not use their right to have an insight into the documents and decisions are made without their knowledge. In addition, the Law does not precisely stipulate in what way it is possible to get an insight into documents nor does it define the procedure once the citizens submit their comments. Therefore, in practice, there is no instrument that would control the Mayor regarding decision making on plan development.

Although organizing consultations with citizens provides transparency and justification of the decision on a plan development, there is no case of such a procedure in practice. In cases when the public does not have an insight into the decision on plan development, a wide area for the Mayor's abuse of his/her discretionary power, because in such a situation there is no control over decision making on realizing big financial interests of investors interested in construction.

If the public does not have an insight into the program tasks, by putting specific requests, like in cases of defining criteria for a tender, it is possible to eliminate the competition and allocate the job in making a new or changing the existing plan to a company that was chosen in advance (more on this in part 2.2)

#### **Model <sup>4</sup>**

A contractor develops a long-term relationship with a Minister and other officials in the Department of Industry in an overseas country. The Minister and officials are invited for a visit to the factory of the contractor where it manufactures its equipment. The contractor pays the expenses of the trip, including first class air fares, hotels, meals, escorts and shopping expenses. During this trip, the contractor learns more about the officials' tastes in holidays, gifts etc. Over the next two years, free holidays and gifts are provided to the officials, and a repeat visit to the factory is arranged. School fees are paid for the Minister's children. On the second visit, the contractor places a proposal before the Minister for the contractor to build an industrial plant in the Minister's country. A commission equivalent to 20% of the price of the plant would be made available to the Minister and his accompanying officials to be shared out as the Minister saw fit. This 20% would be payable in foreign currency into a tax haven of the Minister's choice.

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<sup>3</sup> Previous Law defined that Decision is reached by Republican or local parliaments.

<sup>4</sup> Transparency International (TI UK): Anti-Corruption Initiative in the Construction and Engineering Industry, Report two: Examples of corrupt practices, Neill Stansbury, March 2004. Author is director of TI for construction and layer specialized for construction.

### **CASE STUDY 1: Changes and adjustments of plans in the Municipality of Podgorica**

Over a long period of time, majority of Montenegrin municipalities have not adopted a single plan due to lack of funds needed for their development. In transitional processes, Podgorica, as the industrial and administrative centre of the Republic, along with the town of Budva, a major tourist destination, have attracted almost all capital of oligarchs interested in construction, which created a strong pressure for adjustments of existing plans to their interests.

During 2004 and in the first quarter of 2005, the Municipality of Podgorica has initiated changes in approximately 40 detailed town plans (DTP). In that manner, some of the illegally developed apartment buildings were legalised, where in case of 20 DTPs, changes in space were so enormous that they required adjustments of plans of higher level and changes in general town plans (GTP).

Frequent changes of plans increase investment risks, and the long-term planning is used in order to provide legal and property security for the investors as well as to insure successful completion of the initiated projects.

Plans of higher level are adjusted i.e. changed in compliance with requirements of plans of lower level, which indicates there is a lack of clear and long-term planning policies. This represents a clear incentive for potential investors to try to realize their interests through corruption, especially by using legal possibility to finance plan development which enables them to legalise their buildings and create space for constructing new ones. Additional problem represents the fact that financing of plans is not accessible to all, since it depends on Mayor's decision to change a plan.

In most cases, DTPs and GTPs are changed simultaneously, they are designed by the same companies, reviewed by the same commissions appointed by the Mayor him/herself.

Many city areas of Podgorica, especially settlements that are heavily affected by illegal developments as a response to social needs, are still not covered with spatial plans. On the other hand, for some areas that are particularly attractive to big investors, plans are changed several times during one year, most often only to formalise present situation in the field and legalise illegally constructed large apartment/business buildings or to increase dimensions of their foundations or number of floors.

## **2.2. Drafting plan documents**

The Ministry of Spatial Planning and Development or local governments assign drafting of plan documents on the basis of a public tender. Corruption can appear in the following cases:

- Program task or tender criteria can be defined in such a way that only one company meets the defined conditions.
- Tender can be designed in such a way to produce unnecessarily large and complex bids where the difference in the real cost and the submitted bid represents a bribe to those who decide on the tender and an increased profit for the company which is developing the plan.
- Through an agreement with the clerk in charge of tender, a company may submit a bid with a lower price, and after getting the job the company may ask for an increase due to an alleged need for working hours, equipment and/or time that exceed the previously planned ones, but also due to extraordinary circumstances, etc.
- As for tenders referring to development of plans for areas attractive for investors or those with no illegal construction, the interested companies can offer a bid with the price lower than real because they count on a profit from corruption during plan development process (more about this in the next part). This is particularly dangerous if the price is the only criteria for selection of the most favorable bidder.
- In case of a small number of companies that have a license for developing plan documents, it is possible to reach an agreement of the division of market and/or the price that will be offered on the tender. In accordance with the agreement, more bidders participate at the tender, which leads to a simulation of competition and inflation of prices.
- Some bidders can be directly linked to investors interested in the area which is the subject of the plan. They can offer the best price or bribe other tender participants so that they withdraw the bid owing to the profit derived from the corruption.

Plan development process defines how the land will be used, which is followed by decisions on the position and size of object and ancillary facilities. Thus, companies engaged in developing plan documents are especially exposed to pressures by the investors interested in building in the area for which a plan is developed as well as investors that have already built the objects illegally and want to legalize them through a plan development process.

As for construction of big business objects or flats for the market on attractive location that bring the investors large profits, the amounts they are ready to give for corruption are often much larger than the profit the planners have for the development of plan documents.

It is especially important to stress that financing plan development by the investors that have illegally constructed objects on a certain location put the planners into the position of the conflict of interest, because they are paid to adjust plan to need of the beneficiaries<sup>5</sup>.

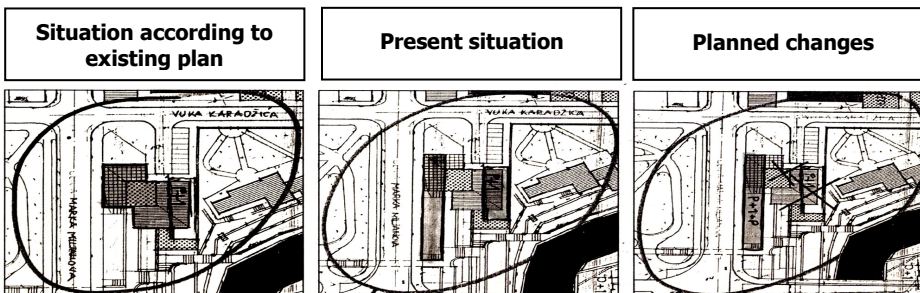
### CASE STUDY 2: Increasing dimensions of object through changes in detailed plans

At the end of 2003, director of the company "Zetogradnja" Blagota Radovic said that foundations of the new building can withstand additional floors in case the Municipality changed the detailed plan. Municipality changed the detailed plan "Poslovni centar Kruševac", Zona B, and increased the number of floors and total area of the object for 5394 m<sup>2</sup><sup>6</sup>.

With the changes and adjustments of the Plan "Business Centre Krusevac", Zone "A", the object constructed by the Company "Cijevna komerc" was transformed into apartment/business building with an increase of dimensions by 125%<sup>7</sup>.

Dimensions planned under the old plan	Dimensions planned under the new plan	Difference between plans in m2
4.707,00 m2 of business premises	3.662,48 m2 of business premises	- 1.044,52 m2
175,00 m2 of garage space	2.435,15 m2 of garage space and other facilities	+ 2.260,15 m2
0 m2 of apartment space	4.968,57 m2 of apartment space	+ 4.968,57 m2
<b>Total area: 4.882,00 m2</b>	<b>Total area : 11.066, 20 m2</b>	<b>Difference: 6.184,2 m2 / 125%</b>

## DOKUMENTACIJA O "GRAĐEVINSKIM PODVIZIMA" GRADONAČELNIKA MUGOŠE!



An article from "Crnogorski književni list" – July, 15<sup>th</sup> 2003

**Documents on the "construction achievement" of the Mayor Mugosa:**

<sup>5</sup> More detail in case study 3: Financing plan development by owners of the illegally developed objects

<sup>6</sup> Agency for development of Podgorica, act No 01-031/04-8217 from 23 XII 2004. More details in Case Study 7: "Maksim" building

<sup>7</sup> Secretariat for Spatial Planning and Development, Podgorica, act No 08-351/04-3241 from 20 XII 2004

**CASE STUDY 3: Financing development of plans by the owners of illegally developed objects**

Area of Plavnica is situated within the National Park of Skadar Lake, Zone One, on the very shore of the lake. Construction of objects in Plavnica, a joint project of three brothers and their sister, started in 1998. According to one of the owners, Dragan Pejovic, Ministry for Spatial Planning and Development banned the construction for a year and a half, and after that period the construction continued<sup>8</sup>.

Conclusion of the Mayor that was used for defining programme task is a document that does not have to be published, while in practice it is almost impossible to get an insight into its content.<sup>9</sup>

Development of the plan was financed by Ecoturs Company Ltd.<sup>10</sup> whose owner is one of the investors in the Plavnica area<sup>11</sup>. By adoption of this plan in July 2005, all illegally developed objects in that area were legalised and all new elements previously planned by investor were defined, except the Zoo.

Beginning of the construction of objects	Year 1998
Decision on starting development of the "Plavnica" project	Year 2001
Adoption of the plan by the Local Parliament of Podgorica	Year 2005

Area covered with the Project is 34.43 hectares, where the following objects have been planned for construction<sup>12</sup>:

- Berth, Marina, gas station for yachts, spare parts shop, catering facilities and a car park for 410 vehicles
- Restaurant of 1.100 square meters and covered terrace of 650 square meters, ancillary facility
- Amphitheatre (a restaurant with an open pool and a stage of 1.800 m<sup>2</sup> and another open pool and stage of 500 m<sup>2</sup>)
- Hotel of 2.900 square meters with 68 beds, car park for 222 vehicles
- Artificial lake with aqua-land of 3.250 square meters
- Brewery and winery of 500 m<sup>2</sup>, restaurant-bar of 250 m<sup>2</sup>
- Hunters' lodge of 500 m<sup>2</sup> and religious object– a church of 18m x 12m
- Sport area – 4 tennis courts, 2 basketball courts, covered auditorium, running track, horse track, etc.

Total gross construction area of the ground floor	8.288 m <sup>2</sup>	Number of parking spaces	222 + 410
Total gross construction area that is developed	11.663 m <sup>2</sup>	Area of the car park	15.525 m <sup>2</sup>
Area of pavements and pedestrians' lanes	10.668 m <sup>2</sup>	Area covered with road	11.820 m <sup>2</sup>

<sup>8</sup> Daily "Vijesti", July 25<sup>th</sup> 2005, page 22: Huge construction site on Plavnica, local MPS will decide on DTP on Friday: New picnic resort till the summer next year

<sup>9</sup> "Decision on starting development of the project Ref. No. 01-031/01-15737 was adopted at the session of the Local Parliament of Podgorica held on February 23<sup>rd</sup> 2001. Programme Task was defined by the Conclusion of the Mayor of Podgorica Ref. No. 01-033/01-15737 from September 27<sup>th</sup> 2001. Development of the projects was given to "Montplan" Company, in accordance with the Decision Ref. No. 01-033/01-16765 from October 22<sup>nd</sup> 2001."

<sup>10</sup> Decision No. 01-033/01-16765 of October 22, 2001

<sup>11</sup> Extract from the Central Register of the Commercial Court, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50070810](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50070810)

<sup>12</sup> Draft Decision on the Podgorica Project "Plavnica" Design, Decision No 01-031/05-5239 of July 10, 2005, signed by the Mayor of Podgorica Mr Miomir Mugoša

### **2.3 Professional Expertise of Plans and Submitting Plan Documents for Approval**

Professional expertise of local plans is done by a commission appointed by the Mayor on the basis of a Decision or a Conclusion that he/she does not have to make public, while the public is not informed about the fees of the commission members and these data are not submitted to the local parliament.

Since the Mayor has the right to appoint and dismiss president and members of the commission at his own discretion, he/she is in a position to exert influence on decision making and control of a significant part of the plan development process, which, in addition to all other powers, makes this function very susceptible to corruption.

According to the new Law on Spatial Planning and Development, professional expertise of state plan documents that are adopted by the Parliament of Montenegro is done by the Council for Spatial Planning. The Law does not stipulate criteria and procedures for the selection of the Council members. It just defines that they are appointed by a Government act and selected among professionals and scientists. Although the law on spatial Planning and Development came into force on May 5, 2005, there are still no indications when the Council will be formed and who will be its members, what is the selection procedure and how will the conflict of interest be dealt with.

Law on Spatial Planning and Development defines that the plans covering smaller territorial units must be in accordance with the plans of a wider territory, while local governments, before submitting plan documents to the local parliament for adoption, have the responsibility to ask the Ministry of Spatial Planning and Development to give their opinion whether these documents are harmonized with the plans of higher importance. The previous practice has shown that in some cases the Ministry gave their approval for the plans that were not in compliance with the higher plans, but there is no evidence that someone was held responsible for that<sup>13</sup>.

The Law on Spatial Planning and Development defines that if the Ministry does not give their opinion whether the plan is compatible with higher plans within 30 days, it shall be deemed that the approval was given. Such a legal norm represents an incentive for corruption, because it hinders establishing of individual responsibility of the Ministry's employees in cases when they miss to submit an opinion for a plan whose realization would produce harmful consequences because of its incompatibility with a higher plan.

In cases when a detailed plan (DTP) defines bigger changes in space, which are not compatible with general plan (GTP) or the spatial plan of the local government, Mayor can decide to change simultaneously two plan documents of different order that belong to the jurisdiction of the local government.

If the Mayor uses his/her discretionary power to appoint the same commission members for the expertise of the plan documents, he puts them in the position of the conflict of interest. Actually, commission members get a fee for their job and are interested to see both plans changed as it doubles their fees. In case they disagreed with the changes of the higher plan, changes of DTP could not be carried out. In such a way, commission members are in a position to assess which plan should be in accordance with the public interest, while on the other hand there is their own interest in the form of a fee they get for their expertise.

The commission gives its professional assessment first on the draft plan that is then submitted to public hearing and then to the final draft which is defined after the public hearing and sent to the parliament for adoption. There is no practice of submitting a feedback obtained from citizens after the public hearing referring to their approval or rejection of some solutions from the plan, on the changes in the plan after the public hearing or in the stage when the plan is submitted to the parliament, which is very stimulating for corruption as it allows decision making without public control.

An inclination to corruption additionally increases when the same commission members are constantly appointed. In such a way they have a monopoly, which increases the pressure by the investors interested in the construction in the areas for which plans are developed.

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<sup>13</sup> More details in Case Study 5: Incompliance of the plans - GTP Budva – Bečići

**CASE STUDY 4: Project "Landfill with the Recycling Facility"**

Since the beginning of 2004, not a single commission for revision of plans that was formed by the Mayor of Podgorica has given a negative opinion on any of the draft plans or final document, although in many cases numerous irregularities were registered. One of the examples is "Landfill with the recycling facility "

	Changes and adjustments of the Spatial Plan of Podgorica	Project
Decision on initiating development of the plan	29 VII 2003	29 VII 2003
Decree on program task	7 IV 2004	7 IV 2004
Decision on selection of the company for plan development	7 VI 2004	7 VI 2004
Company developing the plan	"Montecep"	"Montecep"
Decision on forming the commission for plan assessment	12 VII 2004	12 VII 2004

Mayor has delegated the same commission members to assess both Spatial Plan and the Project

**Spatial plan**

All Commission members gave their positive opinion on the draft of the document and the Final Document of Changes and Adjustments of the Spatial Plan of Podgorica for the area of the Project "Landfill with the Recycling Facility

**Draft Decision on the Development of the Draft Project**

Member of the Commission for assessment of the mentioned Project, Ana Misurovic, who is in charge of the area of ecotoxicology, in her report from December 14th 2004 put the following:

- There was no analysis of the present status of the quality of air, soil, subterranean waters as well as assessment of impact on environment as it was required by the program task
- It is unacceptable that the landfill tubs are positioned only 5 meters below the surface and that their height is up to 25 m. Placing the landfill tubs 15-20 meters below the surface would prevent forming of the "waste dump hill" of up to 25 meters in the Zeta Valley (approx. a three floor building) that would significantly endanger the landscape and raise costs of maintenance and backfill.
- Ordinary disposal of organic dump in an open space is out of the question in Podgorica due to high temperatures and heavy smell of decomposition of the organic matter as well as due to possible self-combustion.
- It is obvious that in the phases I and II, a possibility of filtering gas has not been taken into account, which is not acceptable, because then we cannot speak of a landfill.
- Space for open disposal of waste cannot be located on the Livada location and close to settlements.

At the end of the report, Ms Ana Misurovic still offers her positive opinion on the plan:

"I think that the Draft Plan that was submitted must be revised in compliance with these remarks in the process of developing the final document. However, for the purpose of shortening the time for its processing, I suggest the plan to be forwarded to further procedure in this form since majority of remarks of the other reviewers were included in the new draft of the text."

Rapporteur for the area of water control systems, Mr. Milorad Jankovic stated that "the draft plan has not been developed to the level that is required for the project of this kind", but still gives his positive opinion for the purpose of "shortening the time of procedure".

The Ministry for Spatial Planning and Development also provided their positive opinion for the draft Project.

**Draft Decision on the Project**

In early May 2005, Ms Ana Misurovic, "after adjustments and incorporation of changes proposed by previous reports" suggested that the Project should be adopted. Mr. Milorad Jankovic thought that "the draft plan should be adopted". The Ministry again provided their positive opinion on plan that is not in compliance with document adopted by the Government.

In the Strategic Master Plan for Management of Solid Waste at the Republican Level, which was adopted by the Government at the session held on January 13th 2005, it was stated that the location for the construction of the landfill in Podgorica was

just partly technically acceptable due to its closeness to settlements and existence of reservoirs of subterranean waters below the existing and proposed location as well as due to a strong public resistance to this solution. "Having in mind that the Municipality of Podgorica did not propose an alternative location, this project was followed by the request of the Municipality to take into consideration the existing location. Shortcomings of this decision were presented to the Municipality with this project."

On May 25th 2005, the Local Parliament of Podgorica adopted the Project "Landfill with the Recycling Facility"

	Draft Project	Final Project
Conclusion of the Commission for assessment of the plan	December 2004	May 2005
Request for Ministry's opinion	December 21 <sup>st</sup>	May 5 <sup>th</sup> 2005
Ministry's opinion issued	December 23 <sup>rd</sup>	May 9 <sup>th</sup> 2005
The Strategic Master Plan for Management of Solid Waste adopted by the Government		January 20 <sup>th</sup> 2005.

### **Influence of a Landfill for the Contamination of Subterranean Waters – Opinion of the Public Company "Water Supply and Sewage Management" (VIK)**

In the Opinion on the Draft Changes and Amendments of the Spatial Plan (October 27, 2004), Director of the Public Company VIC, Zoran Jankovic, reminds that VIK sent a letter to the Municipality on March 31, 2004, asking for a timely warning to the plan developers to exclude other purposes of the area of water springs for the purpose of supplying drinking water and prevent any contamination. He concluded the following:

- the text and the graphs do not describe, point to or show the location of the existing water springs that is included in the water supply system of Podgorica, with the capacity of 350 liters per second.
- the study referring to the selection of location for the landfill has already been made, so "it is not clear to him whether the facts referring to the protection of subterranean waters have been taken into consideration".

Jankovic still suggested adoption of the plan.

In the opinion on the draft plan, the newly appointed director Milivoje Pavicevic said that they send a letter on February 8, 2005, asking the plan developer to say explicitly whether the offered technical solution guarantees full safety and protection of subterranean waters, claiming that the developer had not been clear on that. Pavicevic still suggestion plan adoption.

According to opinion of the architect Jovanke Vukčević, member of the Union of Architects of Montenegro that was also submitted to responsible institutions construction of the landfill on planned location will be a "strategic development mistake in town planning":

- "During selection of the future landfill location, present and future expansion of the city limits toward east was never addressed in the study and planning documents (intentionally, I believe)."
- "In the previous period, a bridge over the Banja (old Turkish bath) with connection to boulevard in this part of the city, followed with significant infrastructure. For a long time, boulevards in Podgorica couldn't take you anywhere. Emerging now is the opportunity that first large traffic stream could end on the landfill."
- There are great chances that only available resource for further expansion of the city limits will become a landfill with capacities for the following 20 to 50 years. Alternative possibilities for city development – areas of Konik and Cemovsko polje, previously underestimated, now emerge as the new possibility. Is it possible that out of 8.446 hectares covered by General Plan of Podgorica, landfill must be permanently placed within the urban core of the city, degrading existing urban structures and blocking further development of the city in that (last available) direction?

***Copy of the Hydro geological map of Podgorica with landfill location is in the part of the publication with photos,***

### **CASE STUDY 5: Incompatibility of Plans – GTP “Budva – Becici”**

In 2001, representatives of the NGO “Civic Initiative” from Budva submitted an initiative for assessing compliance with the Constitution and legality of the GT “Budva – Becici” due to its incompatibility with the Spatial plan of the Republic of Montenegro (PPRCG), i.e. with the Spatial Plan of the Municipality of Budva (PPOB).

As a major complaint against the GTP “Budva-Becici”, in the initiative that was submitted to the Constitutional Court of Montenegro, the NGO representatives stated that almost all the areas of the town have an increased density of population as well as extended zones allocated for construction of objects at the expense of public and green areas. It was also mentioned that GTP “Budva-Becici” is not compatible with PPOB and PPRCG.

#### **Position of the Ministry for Spatial Planning and Development on the Initiative and Relevant Documents**

The Constitutional Court asked the Ministry to submit their opinion on the initiative together with complete documentation relevant for the GTP “Budva-Becici”.

The Ministry stated that this GTP was adopted in compliance with the Law and that there is no need for the Constitutional Court to initiate a procedure. In addition, despite the Court’s clear demand, the Ministry did not submit their expertise on the compatibility of the contentious plan with PPRCG.

On two occasions, on September 10th and November 2nd 2001, the Constitutional Court asked for the opinion of the Municipality of Budva, as well as complete relevant documentation that they possess. The Municipality of Budva only submitted their opinion on the initiative, but not the Ministry’s opinion on GTP. On December 21st 2001, the Constitutional court asked for the third time for relevant documents to be submitted within the period of 5 days.

The Document in question was the opinion on draft GTP and its compliance with the Law and PPRCG, issued by the Ministry on December 23rd 1994. The position of the Ministry was that the changes and adjustments of the plan were in compliance with PPRCG, although they admitted that “there are quantitative deviations (number of inhabitants, power and other infrastructure systems, etc). This document was signed by Ms Nada Ulicevic, former Secretary of the Ministry, present Deputy-Minister and head of Department of Supervision and Discipline Procedures.

#### **Launching Procedure on the Initiative**

Since the Constitution Court did not manage to obtain the requested documentation, the initiative was accepted on March 12th 2002 and the procedure for legal assessment of the GTP “Budva-Becici” plan was launched. The Court decided that there was no evidence that the Ministry issued their approval or that the plan was in compliance with PPOB.

In the meantime, on May 15th 2002, elections were organized for the Local Parliament of Budva, where the opposition political parties took the majority of votes and replaced the local authorities.

On its session held on June 18th 2002, the Constitutional Court reached the decision that the GTP for the coastal area of the Municipality of Budva was not in compliance with the Constitution and the Law because of irregularities of the Decision on Plan Development. It was specified that the Decision did not contain data on the amount of funds required for the plan development, duration of the plan and evidence on the previous approval of the Ministry, i.e. evidence that could show that the plan was in compliance with PPOB.

#### **Implementation of Detailed Plans Developed under Disputed General Town Plan**

After the Constitutional Court repealed the GTP “Budva – Becici”, the Municipality of Budva and the Ministry of Spatial Planning and Development continued to issue construction licenses on the basis of the detailed plan that was developed in accordance with the disputed GTP.

In September 2002, the Municipality of Budva requested from the Constitutional Court an interpretation of the practice to implement detailed plans that were developed on the grounds of the General Plan that had been repealed. The Constitutional Court has never provided any interpretation of its decision. On September 26th 2002, the citizens that launched the initiative before the Constitutional Court requested from the Basic Prosecutor from Kotor to give his opinion on this practice.



### **Position of the Ministry for Spatial Planning and Development**

On February 21st 2003, the new minister, Mr. Ranko Radovic, submitted the opinion of the Ministry to the Municipality of Budva, claiming that detailed plans were not subject to legal assessments, and that they can be implemented, regardless of the fact that the General Plan had been repealed. After this, the Municipality and the Ministry have continued to issue construction licenses.

### **Position of the Basic Prosecutor**

On the 28th of May 2004, Basic Prosecutor from Kotor warned the Municipality of Budva that detailed plans were not in compliance with the rejected General Plan and that the whole process was illegal. He also stated that the persons employed in the Local Secretariat for Spatial Planning could be held responsible if they did not stop to issue constructing licenses. The Prosecutor advised them to ask the Ministry for their official position on this issue.

### **Position of the Ministry for Spatial Planning and Development**

In January 26th 2005, the new minister, Mr. Boro Vucinic warned the Municipality of Budva that construction of the new tourism and other objects was not possible since the new General Plan was still not adopted. He also stated that the detailed plan would be no longer implemented.

### **Position of the Municipality of Budva**

Local authorities claimed that position of the Ministry was nothing but "a political pressure for the purpose of magnifying the crisis in the local government"<sup>14</sup> run by opposition political parties and the Ministry rejected these claims. A month and a half later, on March 16th, extraordinary local elections were announced. They were held on May 22nd 2005 resulting with a change of local government.

### **Law on the Constitutional Court of Republic of Montenegro, Article 69, paragraphs 2 and 3:**

"Regulations and other general acts brought for the purpose of law enforcement and other regulations claimed not to be in compliance with the Constitution and law will not be implemented as of the date of making the decision of the Constitutional Court public.

Enforcement of final individual acts adopted on the basis of regulations that cannot be implemented any more can't be allowed or carried out. If the enforcement has started, it shall cease."

### **Constitution of Montenegro, Article 116, paragraph 2, paragraph 4**

"Decision of the Constitution Court is executive and mandatory to all.

Where needed, execution of the decision of the Constitution Court is ensured by the Government. "

<sup>14</sup> Daily "Vijesti": Head for Town Planning in Budva criticized the decision banning construction in the tourism capital, February 11, 2005.

**CASE STUDY 6: Violation of the Decision of the Constitutional Court on Repealing the General Town Plan "Budva – Becici"**

Mr. Ognjen Balabusic took over the position of the Secretary for Urban Development in the Municipality of Budva after the local elections held on May 15th 2002, which resulted in the opposition parties taking the lead.

The following scan shows a copy of one of the pages of the Municipality of Budva Register. This page contains a record of the Decision of the Secretariat for Urban Development reached when Mr Ognjen Balabusic was still the Head of that institution.

The Decision of the Secretariat was reached in order to extend the validity of the previously issued act to Mr. Ognjen Balabusic. Date of issuing the act was corrected by putting July 11th 2002 instead of July 26th. The Decision of the Constitutional Court to repeal the General Town Plan was published in the Official Gazette on July 18th 2002.

245	15.01.2002	879
246	15.05.2002	1001
247	26.02.2002	300
248	30.02.2002	805

Редни број Број доставља законе	Датум примљена та код разлика	Број примљена из одредбе евенуације	Позива о страни и кратка садржај предмета	Датум примљена из примљена воступа	Датум допуњава о стране државних	Датум примљена за 11 стат. попуњава	Датум допуњава о стране државних	Предмет времена		Ознака о начину за резултат времетраја и опис	Позива о калкулацији предмета	Напомена
								датум	потпис			
240	3.02.2002	751										
241	2.01.2002	823										
242	1.07.2002	721										
243	7.02.2002	750										
244	09.07.2002	861										
245	15.01.2002	879										
246	15.05.2002	1001	Salabusic, Ognjen Balabusic, direktor									
247	26.02.2002	300										
248	30.02.2002	805										
249	1.02.2002	865										
250	16.01.2002	942										
251	29.09.2002	807										
252	2.10.2002	816										
253	31.10.2002	1011										
254	6.11.2002	1130										

## **2.4 Citizen Participation in the Decision Making Process**

The new Law on Spatial Planning and Development guarantees transparency of the plan developing process and defines responsibility of state institutions to include citizens in making decisions.

Citizen participation in making decisions on the plans adopted by the local parliament is more closely defined in the Law on Local Government, but there are no guidelines for inclusion of citizens in drafting state plan documents. This significantly reduces transparency of the planning process, because state plans are of crucial importance and they define the purpose of a certain area on a long-term basis.

In cases when citizen participation is on a low level and represents just a mere fulfillment of a legal norm and provision of legitimacy of the decision already made in advance, a large space for corruption is opened, because decisions are made far from public and discretionary powers are practically extended. When public is tired of simulated public hearings, it becomes less interested to perform control and participate in decision making processes, therefore making a job of hiding corruption quite easy.

Local governments most often publish the information in dailies in the form of press releases and invest little or no effort to inform citizens in alternative ways.

Citizens often learn about a change of a plan only when their implementation starts and it is almost impossible then to stop the construction of an object. The only civil protest that ended successfully was the one against construction of the multi-storey building "Maksim" (case study 7).

Municipal bodies rarely try to present the planned changes in space in a way that is clear and acceptable for citizens. Therefore, even those who come to public hearing are not adequately informed about the plan content.

In practice, citizens are often asked to suggest an alternative in the form of a draft plan, although they would have to hire experts and provide significant funds for that, without guarantee that their proposal would be accepted. In such a way, local governments reduce the number of those who can give their comments about the plan and reduces the circle to experts only, which is discouraging for other users of space for which the plan is developed.

Local governments do not have legal grounds for such a conduct with citizens. They are responsible for organizing public hearings, write down the comments and suggestions given during the hearing and submit them to the commission for the plan expertise.

When citizens are deprived of the feedback, such as which proposals were accepted or rejected and why, it is an additional discouraging factor and it significantly endangers transparency of the planning process.

If the citizens cannot influence the decisions within the legally defined procedure, they will be forced to realize their interests through corruption.

**CASE STUDY 7: "Maksim" building**

Public openly speculated that the case of "Maksim" Building actually contributed to transferring into media a war between construction lobbies, i.e. the Mayor of Podgorica, Mr Miomir Mugosa, on the one hand, and Mr. Aco Djukanovic, brother of the Prime-Minister and Mr. Vesko Barovic, controversial businessman and close friend of the Prime-Minister on the other. Following is the information collected from the daily "Vijesti".

Construction of the apartment/business building with 14 floors with total usable area of 13.800 m<sup>2</sup> on has been planned on the parcel No. 81 covering the area of approximately 1.300 m<sup>2</sup> (corner of the Boulevard Revolucije and Street Marksa i Englesa), according to changes and adjustment of the Detailed Plan for "Novi Grad 1 i 2". The building has been given the name "Maksim" and its investor is the Company "Zetogradnja" from Podgorica.

In November 2002, residents from the surrounding buildings submitted appeals to the Basic and Supreme Court against the Ministry of Spatial Planning and Development that had issued the construction license. In the first instance proceedings, the Basic Court claimed that this issue was out of its jurisdiction and in the second instance, the Court rejected the appeal. The Constitutional Court has rejected the citizens' initiative for legal assessment of the Decision on adjusting and changing the Detailed Plan for "Novi grad 1 i 2".

The following persons also participated in the citizens' protest<sup>15</sup>:

- Mr. Filip Vujanovic, President of the Republican Parliament at that time, now President of the Republic of Montenegro, and his wife Ms Svetlana Vujanovic, a judge of Higher Court,
- Mr Aco Djukanovic, brother of the Prime Minister ,
- Mr. Veselin Barovic, a businessman,
- Mr. Darko Uskokovic, minister of economy at the time, now resigning from the position of the Minister of Economy,
- Mr. Vuk Boskovic, former Advisor for Security in the Government of Montenegro, now Advisor for Security in Office of the President of the Republic,
- Professor Dr Nebojsa Vucinic, university professor and director Center for Human Rights of University of Montenegro

**October 27th 2004, Mayor of Podgorica, Miomir Mugosa:  
Those who protested because of "Maksim" building are "bukaci"<sup>16</sup>**

**The Most Significant Information on Residents' protests (chronologically) and their Results:**

**January 22nd 2003:** Workers of the Company "Zetogradnje" started with initial works for constructing "Maksim" building. Residents tore down the pillars that were constructed.

**January 24th 2003:** Mr. Aco Djukanovic, brother of the Prime Minister and Mr. Veselin Barovic, businessman and friend of the Prime Minister joined the residents' protest. Mr. Aco Djukanovic: "This is all illegal and represents an act of violence in Montenegro which lacks citizen courage the most. Illegal acts cannot produce legal results, and the fact that the company "Zetogradnja" possesses the required documents does not necessarily mean that this work is legal. Documentation that was provided for this company by the Mayor of Podgorica, Mr. Miomir Mugosa, is illegal.

**January 24th 2003:** Press release from the Office of the Mayor Mugosa: "Local Government and the Ministry have been acting in accordance with law".

**January 24th 2003:** Assistant minister for Spatial Planning and Development, Mr. Dragan Markovic: "The Role of the Ministry in case of 'Maksim' building is not a big one since the local government decided on the building purpose and location. The Ministry just conducts the administrative procedure on the basis of documents, approvals and plans developed by the Municipality. If the investor was provided with all those documents, our Construction Department just issued a license."

<sup>15</sup> Daily "Vijesti", February 24, 2003: Vujanović dropped by to see the "foundations" of 'Maksim'; Daily "Vijesti", January 24, 2003: Vesko Barović, Aco Đukanović i Svetlana Vujanović also protested against the decision on building 'Maksim'; Daily "Vijesti", January 25, 2003: Residents protested yesterday as well because of 'Maksim', construction machine at a standstill, Aco Đukanović said: "I'm just a tenant in 'Vektra', but human injustice hurts me.

<sup>16</sup> Those that present themselves more important than they usually are

**January 27th 2003:** Residents of the surrounding buildings lodged a request in the Basic Court to issue a temporary ban for the construction of the object

**February 6th 2003:** The investor has announced that they will request assistance of the state institutions in order to continue with construction works as well as remuneration of costs caused by the construction site fence demolition and obstruction of construction works.

**February 6th 2003:** The Mayor of Podgorica stated that everything that was done in case of constructing "Maksim" building was in accordance with the law, and added that as far as he was concerned, this issue was "a done deal".

**February 7th 2003:** Residents of the surrounding buildings claimed that the company "Zetogradnja" is not the owner of the land planned for construction

**February 8th 2003:** The Company stated that documents that they possess are fully legal.

**February 14th 2003:** Residents claimed that in February 2001, five months before the detailed plan was changed, the company "Zetogradnja" was informed about what would be constructed on that particular location, because the company was provided the information through the analysis of that location done by the "Montecep" from Kotor, the company that developed the plan.

**February 18th 2003:** Mayor of Podgorica, Mr. Miomir Mugosa: "All licenses requested by the citizens that are protesting are filed and their claims that they were not consulted during allocation of that land are not true. I know that some of the citizens that are protesting actually "violated the law" and now use this case as a "smoke curtain".

**February 19th 2003:** "Calmness of that man while, in front of the camera, presents the complete misinformation about the residents being consulted, is just fascinating – said one of the residents and well-known film director Drasko Djurovic, comparing the Mayor with the actor Al Pacino playing the role in the film "The Godfather 2".

**February 21st 2003:** Mr. Miomir Mugosa: "Apparently someone needs to constantly fabricate scandals trying to persuade people that there is destruction in the city, not progress".

**February 27th 2003:** Panel of the Supreme Court of Montenegro rejected the residents' appeal. The Panel was presided by Ms. Stanka Vucinic, and included judges Mr. Sreten Ivanovic and Ms Ana Kolarevic, sister of the Prime Minister.

**February 27th 2003:** Residents of the surrounding buildings announced that they would continue with protests but also announced a new initiative, claiming that the company "Zetogradnja" is not the owner of the parcel No. 81

**March 3rd 2003:** Residents requested from the Minister of Spatial Planning and Development to appoint a commission that would conduct legal assessment of the procedure of issuing particular documents for constructing "Maksim" building.

**March 6th 2003:** Residents requested from the Ministry of Health to make a revision of the procedure of issuing sanitary license.

**March 15th 2003:** On the basis of the reports of the construction and planning experts, the Basic Court issued a temporary ban for the construction of "Maksim" building.

**March 21st 2003:** The investor filed a complaint against the decision of the Basic Court stating that expertise was not conducted properly.

**April 10th 2003:** The Basic Court removed the ban and allowed construction of the building.

**April 11th 2003:** Residents expressed their suspicion that the decision of the Basic Court was influenced by the Mayor of Podgorica, Mr. Miomir Mugosa

**April 19th 2003:** Residents of the surrounding buildings announced that they would submit an initiative for the defense of the rule of law to the State Prosecutor and repeated their opinion that the decision of the Basic Court has political background and that it was influenced by the Mayor of Podgorica.

**April 25th 2003:** The Agency for the Construction Land suggested that the company "Zetogradnja" should be offered a land near the Orthodox temple and the crossroads toward Block V, as a substitute for the present location. Head of the Preparation Department of the Agency, Sasa Lakic, stated that it was not the official offer and that the Municipality would decide on that.

**July 28th 2003:** "The new location for constructing "Maksim" building has not been approved yet, but the agreement with the Agency for Construction Land and the Municipality will probably be reached soon. Due to that shift, the original plan of the building will have to be significantly changed", said Blagota Radovic, director of the company "Zetogradnja".

**04. august 2003:** Constructing of the "Maksim" building was banned after the revision of the sanitary license, which resulted in the finding that this building would have negative consequences for the health of people. Residents filed an appeal against former Minister of Health, Mr. Zarko Micovic and a sanitary inspector that signed the license.

**August 6th 2003:** Construction of the "Maksim" building on the new location started. The design of the building was changed.

**October 30th 2003:** Director of the company "Zetogradnja" Blagota Radovic said that foundations of the new building can withstand additional floors in case the Municipality changed the detailed plan.

**June 23rd 2004:** Detailed plan was changed and the number of floors of the building was increased.

**July 13th 2005:** In the unfinished "Maksim" building, Cultural – Information Centre of Moscow was opened.

#### **CASE STUDY 8: Public Hearing on DTP "Ibricevina"**

The process of public hearings on draft changes and adjustments of the DTP "Ibricevina" was announced in printed media by the Municipality of Podgorica at it lasted for 15 days. The central public hearing was held on June 8th, 2005 with participation of 55 citizens living in the local community called "Masline", representatives of the Montenegro Engineering Company that developed the plan and representatives of the Local Secretariat for Spatial Planning and Development and the Agency for Construction and Development of Podgorica.

Three urban zones were covered by this plan: zone for individual housing development, collective housing development and a recreation zone. Within the zone of individual housing, the plan was to keep all the existing objects and construct new ones with a smaller number of floors. Within the zone of collective housing, the plan was to pull down the existing workers' settlement and construct eight terraced apartment houses with three floors and a loft per each unit. As for the recreation zone, the existing object was planned to be pulled down in order to construct pedestrian lanes, a summer stage and courts.

Presentation of the plan was not welcomed by the public hearing participants, particularly because of the planned demolition of the existing objects. Citizens stated that they had tried to legalize their objects for the past 15 year, but local authorities were not willing to grant their requests. They also emphasized the fact that illegal development was not sanctioned over the past years and that their objects have access to all basic infrastructure services.

Minutes of the hearing were not kept, nor were the citizens properly informed about mechanisms they can use in order to influence the plan. Also, there was no feedback from the meeting to inform the citizens about the final results of their remarks and a suggestion for changing presented draft plan. The draft plan was not changed.

### **CASE STUDY 9 - DTP "Drac"**

At the public hearing held on February 20th 2005<sup>17</sup>, citizens of the Podgorica communities Drac i Cvjetin brijeg said that they were not satisfied with the draft changes of the plan because planners did not take into consideration their needs and suggestions and emphasized that they did not need the planned objects.

According to the draft changes of the DTP "Drac", the plan was to construct an individual housing object and new sport fields near the river Ribnica, an auditorium and sport clubs premises at the stadium of the football club "Mladost", as well as two additional floors on the supermarket in Drac. All the buildings in that zone would have a ground floor and a loft or two floors. The citizens asked the area to be defined as a residential and business zone.

An MP in the Local Parliament of Podgorica, a member of the governing coalition who also lives in that area, Mr. Petar Zivkovic said that the rights and living conditions of the citizens in that community are endangered and that it is unacceptable to offer citizens facilities that they cannot use.

Secretary for spatial planning and development of the Municipality of Podgorica, Mr. Vasilije Djukanovic, said that the Municipality cannot fulfill all the requests of the citizens because if they do so, that would require changes in the general plan and additional costs of approximately 100.000 Euros. He added that the study would take a year to develop in order to determine all the elements influencing the river bed throughout the year, which cannot be justified since that analysis should be conducted for the entire Ribnica river bed, not just for that part of the city.

The plan was changed and adopted at the session of the Local Parliament held on April 26th 2005. Local MPs, members of the opposition political parties, left the session saying that the plan adjustments had been previously arranged using political influence and that local MP, Mr. Petar Zivkovic needed that plan because of his private interests<sup>18</sup>. Mr. Zivkovic thanked the Municipality for accepting citizens' suggestions for changing the detailed plan. Vice-president of the Municipality of Podgorica,

Mr. Djordje Suhij from the Social-democratic Party (member of the governing coalition) said that his party, like all others, has obligations toward their voters if their initiative is in compliance with law.

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<sup>17</sup> Daily "Vijesti", February 19, 2005, Citizens of a part of old Podgorica unsatisfied with the draft changes of the Detailed Town Plan: Residents of Drac do not want creative crop farming, page 22

<sup>18</sup> Daily "Vijesti", April 27, 2005, The ruling coalition in the city parliament did not have a majority yesterday. People's party jumped in: Heated debated about the DUP for Drac i NOR, page 26

## 2.5 Adoption of Plans

State plan documents are adopted by the Parliament of the Republic of Montenegro, while local plans are adopted by the local parliaments.

When the materials for a session is given immediately before its beginning, i.e. when plans are adopted “in an exigent procedure”, MPs and councilors do not have an opportunity to consult either citizens who live at the territory for which the plan is developed or impartial experts who could assess the solutions defined in the plan. In such situations corruption is easy to hide and representatives of citizens do not have adequate information in order to decide what is the public interest there and to vote accordingly on the plan document.

According to the Law on Spatial Planning and Development, in addition to the draft plan, MPs and councilors must be given the report from public hearings which also include comments and suggestions of citizens and reasons for their acceptance or rejection of solutions defined by the commission for professional expertise. If the councilors are not given the minutes from the public hearing and opinion of experts, they will be deprived of the information on the problems that the plan may cause, which will prevent them to get an adequate insight into the situation and bring the right decision.

In cases when the dynamics of adopting plans is such that several plans are included in the agenda for a session, there is an increased possibility that the decision-makers are not adequately informed, which can also enable covering up the instances of corruption.

Since plans are adopted by the parliament, they have the legal force. Therefore, corruption of MPs and councilors has devastating effects on the space. A party interested in the adoption of a plan can ensure control of MPs or councilors through some sort of corruption, blackmail or coercion, thus enabling realization of their own interests. If there is a firm party discipline, it is enough to ensure support of individuals on the top positions in the party hierarchy.

It is of utmost importance to ensure independence of MPs and councilors from the executive power that they have to control. If the executive power provides them benefits that the other MPs/councilors do not have, they are in the position of the conflict of interest since they receive benefits from those they should actually control.

### **Example of one city in the region**

Agenda for the local parliament session in a city from the region usually has a lot of items. The governing coalition has the necessary majority and their MPs vote on the basis of an agreement reached during the meetings of the caucuses.

Majority of the local MPs are quite bored with long discussions since they already know what the final outcome of the session will be. They rather spend their time between two voting chatting in the nearby café or in the parliament hallway. Common practice is that one of the MPs informs the others when is the time for voting so that they can take their seats and perform their duty.

On one occasion, one of the local government officials was late and did not manage to take his seat in time in order to vote. He was at the door of the session hall when the voting started and he did not know which decision was in question, i.e. if he should vote for or against. A quick glimpse to the part of the room where members of his party were seated provided him a clear answer. Their hands raised high above meant that he should vote for.

And so he did. Running down the passage to his seat with his hand in the air, he voted for the decision. The decision was adopted.



### **3. ISSUING CONSTRUCTION LICENSE AND INSPECTION CERTIFICATE**

#### **3.1. Construction License<sup>19</sup>**

When the legislation defining the process of issuing licenses is unclear, contradictory or complicated, there are big incentives for corruption, especially because of intensive personal contacts of the interested parties and civil servants, both in the workplace and the field, which reduced public control of their work to minimum.

The set of documents that have to be provided for a license is not precisely defined by one legal act. Instead, it is defined in different regulations that citizens are not informed about. In addition, the list of necessary documents often contains the item "other documents", which leaves space to the civil servants for manipulations with citizens and extortion of bribe. The process of issuing licenses is very long and complicated as it implies collection of numerous documents in different public institutions whose coordination is very weak. The applicants are in a position to depend on whether a clerk shows good will to put their application into procedure.

It may happen that the silence of administration lasts endlessly and each delay causes big expenses for the investors, especially in cases of construction of residential/business objects for the market. Still, conflicts between big investors and civil servants happen very rarely, which can point to the fact that they further their interests through the process of plan development or that they influence the clerks issuing the licenses owing to corruption.

Investors are very interested in offering bribe in order to speed up the process of issuing the license and overcome the administrative obstacles or for the purpose of "creative" interpretation of legislation in case that do not fulfill conditions to get a construction license. When they initiate proceedings in a court of justice, investors have additional big expenses, because they have to postpone construction for an indefinite time period, while court proceedings last long and their outcome is not certain. The cost of corrupting civil servants is far more acceptable for investors, because it is lower than the costs that prolongation of the construction of object may cause.

On the other hand, salaries of civil servants are very low, they are not held responsible for the mistakes they make and corruption has become a generally accepted model of behavior. Therefore, they are inclined to corruption, especially in cases of construction of big objects when investors are ready to offer huge amounts of money as bribe.

Corruption can appear when calculating costs of utility services, because the system of calculation of utility services costs is very complex, with no public control due to the fact that a small number of citizens and civil servants is informed about the way of calculation. On the other hand, the investor does not have a right of appeal because no legal act is issued, it is only the calculation that is done.

In the Municipality of Podgorica, control of the collection of utility services fees is not possible because contracts are not transparent and in a large number of cases the Municipality takes flats or business premises instead of money. There are neither precise data on the number of objects that have settled their debts for utility services nor data on the number of residential or business units that have become the property of the Municipality.

A special possibility for corruption appears in cases when the investor is interested to tear down the existing object and build a new one on that location. In such cases a clerk can issue a license for reconstruction, even when the new object is larger than the previous one. Thus, the amount to be paid for utility services is significantly reduced and the procedure of issuing the license is simplified.

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<sup>19</sup> In Montenegro, the Ministry of Spatial Planning and Development issues licenses for objects that are of significance for the Republic, such as those for industrial objects and facilities whose operation may endanger the environment, then road infrastructure, power supply facilities etc. The Ministry also issues licenses for business and residential buildings with over 1000 m<sup>2</sup> and objects with more than 4 floors. Local governments issue construction licenses for all other objects.

### **CASE STUDY 10: Faculty of Architecture**

In August 2005, republican construction inspection sealed the construction site of the Faculty of Architecture. The reason was the fact that investor, University of Montenegro did not had construction permit and violated order of the inspection continuing to work on the building.

### **CASE STUDY 11: Hotel "As"**

The Russian company "Njega turs" bought the Hotel "As" in mid 2002 for 4.5 million euros. In stead of invested the agreed 11 million, the Russians invested only 1.5 million euros in its reconstruction by the end of the last year, while the costs of the planned works is around 36 million euros, according to the data of the Ministry of Tourism.

Dejan Gardasevic, manager of the "Njega turs", said at the beginning of 2005 that extensive excavation of the surrounding ground and the reconstruction design had been done in the previous year. He also said that they had obtained all the approvals and that they expect to get the construction license.

Gardasevic said that the first stage was underway and it implies pulling down the hill and dissipation of rocks and other material into the sea in order to form a ground of the future marina with 50 berths for ships of up to 25 meters in length and a heliport, one of three that the hotel complex will have. According to him, the new part of the hotel will be built into the hill and will have 13 floors. 21 million euros will be invested into the first stage only, while the total amount of investment will be 45 million euros, Gardasevic announced.

### **CASE STUDY 12: Sveti Stefan**

In the elite settlement of Sveti Stefan, on the very beach, several investors build their objects and septic tanks illegally. It is the beach opposite the hotel with the same name, the most attractive tourist destination on the Montenegrin coast.

One of the illegal investors is Arsenije Vujovic, former President of the Chamber of Engineering that issued licenses to investors and which was recently closed down on the basis of the Constitutional Court upon the initiative of the Association of Architects.

Residents of Sveti Stefan asked persistently for several years to stop construction of the luxurious villas on the very beach and pointed that due to the unresolved problem of sewage system of the illegally constructed houses, waste waters are discharged onto the beach. In May 2004 there was a big landslide and caving in of the ground which, according to the residents, was caused by an improper dapping of the hill at the time when foundations of some illegally-built seven-storey buildings were constructed.

A part of the object was built without license from the very beginning, while most investors obtained construction licenses from the Municipality of Budva that is in charge of the objects below 1000 m<sup>2</sup>. However, the investors increased the basis and the number of floors during construction.

One year later, in May 2004, the Municipality of Budva and the Ministry concluded that there are illegally constructed buildings in Sveti Stefan and sealed five almost completely finished luxurious villas on the very beach. In the meantime, the Municipality has issued licenses for two objects, while three of them are still sealed, including the object of Arsenije Vujovic.

### **CASE STUDY 13: Construction or re-construction– former shopping center "Tehnomarket"**

At the end of February 2005<sup>20</sup>, company "Čelebić" started with construction works on former shopping center "Tehnomarket". Secretary for spatial planning and development of Podgorica Municipality, Mr. Vasilije Djukanovic, said that his institution had issued the necessary documents for reconstruction in compliance with the valid detailed plan "Stara varos - Blok 7". Building of the "Tehnomarket" was a one floor object, while object that is constructed have more then five floors.

<sup>20</sup> Vijesti, 22. februar 2005. Stanari neće da gledaju u zid

In March 22<sup>nd</sup>, 2005<sup>21</sup>, Republican Construction Inspection banned the company "Celebic" to continue construction works since they had pulled down the existing object against regulations stated in the issued license.

Republican construction inspector, Ms. Suzana Lackovic, said that the company "Celebic" would be able to continue with construction works as soon as they obtain all the necessary documentation and that hole made by pulling down the previous object could not endanger the foundations of the surrounding buildings.

Two days later<sup>22</sup> the company "Celebic" continued with construction works, and Republican construction inspector, Ms. Suzana Lackovic, that was supervising construction of that object said that investor had obtained a license to pull down the "existing" object from local Secretariat for spatial planning and development.

### **3.2. Inspection Certificate**

Inspection certificate is obtained when it is established that the quality of the construction works and the built-in materials, installations and equipment is in accordance with the documents on the basis of which the construction license is issued, as well as in compliance with the regulations, standards, technical and quality norms applied for certain type of works.

If no control is carried out during or after construction and the investor uses materials of poor quality or economizes with the quantity of materials, the safety of the object can be endangered, because the territory of Montenegro, especially the coast, is seismically very active. However, citizens are not aware of the dangers of earthquakes and they pay much more attention to the appearance of the building and the internal decoration (ceramics, finishing carpentry etc.). Since some irregularities can be covered by the wall face during the construction, they can be identified only through the technical control of the object.

One of the most frequent reasons why a large number of objects in Montenegro have not been granted a technical certificate and do not have an inspection certificate is exceeding the planned dimensions as defined in the construction license, both regarding base and the number of floors. This can influence the safety of the object, because the main design may define a construction for an object with fewer floors, which means smaller quantity of the materials used for the basic construction of the object (foundations, supporting columns etc.). In certain cases, investors change the original design to such an extent that the architects initiate court proceedings to protect copyright.

When the construction works are controlled from the very beginning, it is possible to remove the errors that may appear. However, when the errors pile up and are identified only when the commission assesses the works, it is very difficult to order the investor to do huge changes or pull down the object and start from the beginning.

Each delay of the use of the object means additional costs for the investor, especially in situations when the commission for technical control identifies irregularities, which creates grounds for corruption. Commission members have a lot of discretionary powers and they are mainly people who are in direct contact with investors, which creates preconditions for corruptions.

The Ministry of Spatial Planning and Development and local governments have never made public the data on the objects they use without inspection certificate and the Ministry of Spatial Planning and Development itself is located in an object that does not have an inspection certificate. Stimulating violation of law is reflected in issuing licenses for objects that have not passed the technical test.

Inaccessibility of data on the reasons for not issuing the inspection certificate for some objects or the information on which of the defined certificates the investors were unable to provide prevents the assessment of the risk that the residents of those objects are exposed to on a daily basis.

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<sup>21</sup> Daily "Vijesti", March 23, 2005, The investor pulled down a building contrary to law

<sup>22</sup> Daily "Republika", March 25, 2005. «Celebic» faster than license

**CASE STUDY 14: Offices of the Government of Montenegro in building without inspection certificate** <sup>23</sup>

Offices of the Ministry of Spatial Planning and Development and other ministries are placed in the building that do not have inspection certificate. In the document of the Agency for real-estates No. 1147 from March 2003 is noted that the last floor and loft of the "Vektra" building are constructed without construction permit.

**CASE STUDY 15: Hotels**

Budva, September 3<sup>rd</sup> 2003. – This year, after more than 30 years, hotels of the biggest tourist companies "Budvanska rivijera", "Boka", "Korali", "Ulcinjnska rivijera" i UTIP "Crna Gora", this season have finally obtained inspection certificate and working permits. Ministry of Tourism is estimating that one third of the hotels in Republic do not have inspection certificate, adding that until September 1<sup>st</sup>, 61 hotels have obtained certificates.

**CASE STUDY 16: Elementary school "Daso Pavicic"**

Herceg Novi, February 24<sup>th</sup> 2005. – Republic inspector for energy has ordered the management of the elementary school "Daso Pavic" to shut down the heating system because of possible explosion of the system. The Principle of the school said that school never got inspection certificate, due to inappropriate heating and sewage system. School was opened in 1971 and\_ now has 1320 pupils.

**CASE STUDY 17: Cultural and informative center of Moscow**

On the July 13<sup>th</sup> 2005, Mayor of Podgorica opened the Cultural and informative Center of Moscow in an unfinished building, therefore without inspection certificate.

**CASE STUDY 18: Temporary working permit**

Municipality of Podgorica issued temporary working permits to owners of business premises in illegally developed buildings or objects without valid inspection certificate. This was done on a base of Mayor's Decree and represents violation of the Law on Spatial Planning and Development and the Law on Constructing Objects

Secretary for Entrepreneurship Development in Podgorica Municipality, Mr. Miodrag Sofranac said that 150 temporary working permits were issued in period between January 1<sup>st</sup> and July 1<sup>st</sup> 2005, and in 42 cases, duration of the permits was several times extended.

**CASE STUDY 19: Collection of Fees for Development of Construction Land – the case of "Imanje Knjaz"**

Property Directorate of the Podgorica Municipality responded to a letter of a councilor on November 17, 2003, claiming that the investor of the "Imanje Knjaz" did not pay the fee for development of the construction land because that land is outside the limits of GUP and the fee did not have to be paid.

In response to a councilor's question from January 13, 2004, The Secretariat for Development and Construction stated that the fees for development of construction land for objects outside GUP are collected in compliance with the Conclusions of the May from 2000 and Conclusion on the Amendments of Conclusions from 2001, offering a list of investors who had signed agreements with the Municipality.

**CASE STUDY 20: "Spona" building**

July 2005, Podgorica: Three flats were destroyed in a fire that burst out in the apartment building called "Spona" in the Stari aerodrom area in Podgorica. There were no casualties because at the time of fire the residents were not at home, but an extensive physical damage was caused. Mayor Mugosa, said that the cause of the fire would be established by the Ministry of Interior, but it is supposed that the fire was caused by a failure at the electric installations. He said that the object has never had an inspection certificate.

<sup>23</sup> Weekly „Monitor“ No 773, August 15 2005, Monitor researches: Urban Mafia Against Podgorica

## 4. CONSTRUCTION AND RECONSTRUCTION OF OBJECTS

### 4.1. Tenders

Public procurement rules enable public procurements via shopping method, when the value of order does not exceed the amount of 15,000 euros<sup>24</sup>. One of the most frequent ways of violating the Law on Public Procurement is division of work into smaller parts, so that the price does not exceed the defined limit.

In that way, a direct choice of the company is enabled, which significantly reduces the transparency of the process, enlarges discretionary powers and creates favorable ground for corruption. In case of a conflict of interest, such a discretionary power can provide furthering personal instead of public interest.

This form of simulating a tender can appear in case of small and medium-size activities, such as developing project documentation

#### **CASE STUDY 21: Developing Project Documentation – Shopping Method**<sup>25</sup>

According to the report of the Commission for Public Procurement, the List of agreements concluded between January 1 and June 31, 2003 (<http://www.nabavka.cg.yu/listaugovora.doc>), Public Housing Company Podgorica used the shopping method – through a direct choice of providers concluded two agreements for the amounts somewhat lower than the defined limit. Numbers of the agreements show that they were concluded one after the other and their total value is 29,601 euros.

Within that period, the director of the Public Housing Company was Mirko Nilevic, owner of the company that the agreement was concluded with, i.e. "DEA Ltd." Is owned by his close cousin, Spiro Nilevic<sup>26</sup>.

#### **Procurements of the Public Housing Company Podgorica**

Method of procurement (shopping or tender)	Number and object of the agreement	Amount	Name of provider
shopping	1920 – developing project idea	14,625	"DEA Ltd."
shopping	1921 – developing the main project	14,976	"DEA Ltd."

In the same period, the Municipality of Podgorica concluded four agreements with "DEA Ltd.", also using the shopping method. According to the report of the Commission for Public Procurement, the agreements were concluded successively and represent segments of the same project – school footbridge, while their total value is 19,900 euros.

#### **Procurements of the Municipality of Podgorica**

Method of procurement (shopping or tender)	Number and object of the agreement	Amount	Name of provider
shopping	017-99 – geodetic bed	5,000.00	"DEA Ltd."
shopping	017-100 – ideational solution of the footbridge	4,950.00	"DEA Ltd."
shopping	017-101 – school footbridge project	5,000.00	"DEA Ltd."
shopping	017-102 - access road	4,950.00	"DEA Ltd."

<sup>24</sup> Government of the Republic of Montenegro: Decree on establishing the amounts and deadlines that are applied in the implementation of the method used for public procurement activities, Article 2, paragraph 2 ("Official Gazette of the Republic of Montenegro, No. 23/03: "Shopping method from Article 7, paragraph 2, item (2) of the Law, referring to public procurement, is used for procurements when the value of the order (procurement order) does not exceed the amount of 15,000 euros (fifteen thousand euros) or its equivalent, per order form, or 3,000 euros (three thousand euros) or its equivalent for each item.

<sup>25</sup> Data taken from the list of agreements concluded in the period between January 1 and June 31, 2003 (<http://www.nabavka.cg.yu/listaugovora.doc>)

<sup>26</sup> Extract from the Commercial Court Central Register, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50113803](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50113803)

Corruption can appear in the stage of designing the project, that is defining criteria and conditions for participating in the tender, so that only one company can have the necessary qualifications for the job. The project can also be unjustifiably complex by including unnecessary expenses in the bid (bribe + higher profit for the company), while more companies of the same owner can participate in the tender, which is a simulation of competition.

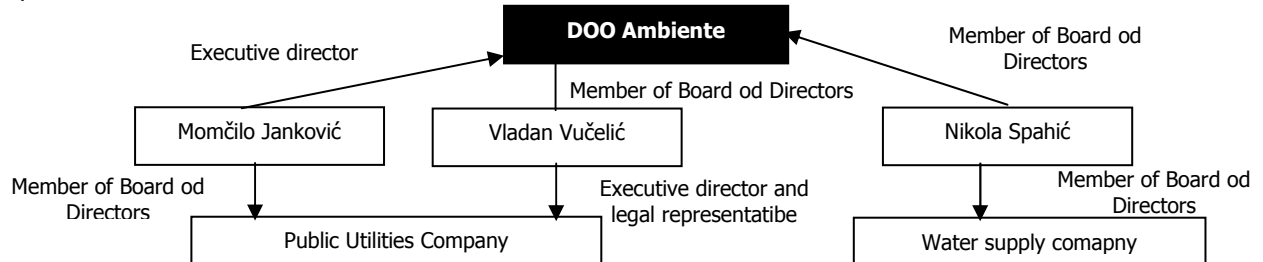
If there is a small number of bidders, they can agree on the price and share the job. It is possible to reach an agreement for each tender on the types of bids that will be given. This increases the price on the tender and it is known in advance who will get the job. Such a situation can bring to creation of construction lobbies that can totally distort the market.

In case that in such an organized system a company that does not have a previous agreement with the others apply for the tender and offer a competitive price, one of the ways to eliminate the competition is to offer the owner of that company money to withdraw the bid. Since other investors will “inflate” the prices through the usual procedure, then expect much higher profits than the competitive company, so they are in the position to allocate money for bribe up to the amount of the expected profit of the competitive company.

In the countries in transition in which law are not observed, if there are powerful construction lobbies, the previously described practice can represent a type of intimidating which is aimed at warning the competitive company not to participate in the tenders that the lobbies are interested in.

#### CASE STUDY 22: Developing Project Documentation – tender

In 2002, Public Utilities Company (JKP) established the “Ambiente Ltd.” which was entered in the Central Register of the Commercial Court as a company dealing with the same activities as JKP – waste disposal and similar activities<sup>27</sup>. In addition to JKP, the founder is also “Tover Multi Utilities Ltd.”, a company founded by a foreign firm with its headquarters in Italy.



Tender for the main project of reconstruction, arrangement and construction of the Landfill in Konik which was invited by the Public Utilities Company was completed in mid March 2003.

Three companies applied for the tender – “Ambiente” from Podgorica, “Vodogospodarski biro” from Maribor and “Adria invest” from Budva in cooperation with the “Proing” Company from Novi Sad.

The Commission for the selection of the best project, consisting of professors Mihailo Buric and Petar Zikvovic, Zdenka Ivanovic and technical director of JKP Miodrag Kostic concluded that all the three companies fulfill conditions given in the competition. The company “Ambiente” was selected.

<sup>27</sup> [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50142652](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50142652)

## 4.2. Construction of objects

Bribery does not stop on the award of the contract. There are many actions after the award of a contract that can have a significant financial impact on the participants and which are therefore prone to bribery

### Corruption during construction <sup>28</sup>

1. Agreeing 'variations' to the contract. It is rare for a contract to be completed in precisely the same form as originally agreed. Changes to the design or construction method may be required due to error in the original design, the intervening circumstances (such as unknown ground conditions), or the client's decision to change the requirements after the project is started. Changes to design or method are normally reflected in 'variations' (or 'change orders') to the contract. Variations normally have cost consequences, as parts of the agreed work may be wasted, new items may have to be ordered, or additional labor and materials may be required. Variations therefore create opportunities for bribery between the contractor and the representative of the client, or the architect or engineer responsible for authorizing the variation and approving its cost consequences. Major infrastructure projects can contain thousands of variations, ranging in cost from a few hundred to several million dollars. The cost effect is not only felt at the level of the main contract. Because of the complexity of the contractual structure in large construction projects, the effects and costs of variations need to be agreed between all affected participants, offering multiple opportunities for bribery.

2. Concealing deferred bribes. Variations provide a mechanism to conceal deferred bribes. A contractor may win a contract tender as the lowest-priced bidder without including a bribe in the contract price, but with a clandestine arrangement with the client's representative that a large variation including a bribe will be agreed at a later stage. Deferring a bribe until after the appointment of the contractor can be an effective means of concealment since there is no competitive tender for variations, and post-contract variations attract much less publicity than competitive tenders. The price of any variation (and of the bribe concealed within it) can therefore be extremely significant.

3. Project delays. It is very common for a project to finish later than scheduled whether due to adverse weather, variations, subcontractor failure or defective materials. The cost effect of delay can be significant. If the delay is the contractor's fault, the client may be entitled to claim liquidated damages from the contractor. If the delay is the client's fault, the contractor may be entitled to claim additional costs for delay and disruption from the client. As a result, the person responsible for agreeing the time and cost effect of delays is vulnerable to bribery. These ramifications may be felt all the way down the contractual structure, offering multiple opportunities for bribery.

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<sup>28</sup> Transparency International: Global Corruption Report for 2005: Finding Roots of Corruption in Construction Industry, Neill Stansbury

**CASE STUDY 23: Construction of the "Millennium" Bridge**

The loan for the construction of the bridge was provided by the investor, Company "Primorje" from Slovenia

Date of the beginning of construction	July 13, 2003
Value of the contracted works, without access roads and installations	5,500.00 euros
Deadline for the completion of works	November 2004
Completion of works	July 13, 2004
Increased value of contracted works	Around 500,00 euros

The Agency for Development of Podgorica, Information on the implementation of the project of the "Millennium" bridge construction in Podgorica, May 9, 2005: "There is a number of open issues that need to be resolved with the contractors. These are:

- Prolongation of the date of starting the works
- Trends in the materials prices (especially steal) on the world market
- Scope of the competed works due to the increase of the bridge span by 5 meters and pylon by 3 meters was cause by unfavorable geo-morphological changes that appeared during the stage of creating the execution project

"After harmonization of view regarding these matters, final value of this important object will be established."

Sasa Lacic, technical director, Agency for Development of Podgorica, July 2, 2005 <sup>29</sup>: "The agreed price of the works is 5.5 million euros, VAT excluded, and the expected increase is between 400,000 and 500,000 euros due to additional works on the bridge."

**CASE STUDY 24: Reconstruction of the Old Building of the "Graficki zavod"**

Three companies applied for the tender for the reconstruction of the building of the former "Graficki zavod" which the Municipality of Podgorica invited in 2001. They companies gave the following bids:

- "Kroling Ltd." – 1,145,976.16 DM
- "Cijevna Commerce Ltd." – 1,482,242.96 DM
- "Celebic Ltd." – 1,255,460.23 DM

The Commission for the selection of the best bidder chose "Kroling Ltd." and the contract in the amount of 997,888.89 DM was signed on September 5, 2001. The annex of the contract from February 19, 2002 was amended with unforeseen and additional works in the amount of 246,879.63 DM. The annex of the contract from August 20, 2002 was amended with the provision referring to the works on the building front in the amount of 235,546.42 DM. The contractor was paid 1,192,202.47 euros for the performed woks after the final accounting.

Amount in the contract	997,999.89 DM
Annex of the contract from February 19, 2002	246,879.63 DM
Annex of the contract from August 20, 2002	235,546.42 DM
Final accounting for the performed works	1,192,202.47 or about 2,384,404.98 DM
Difference between the amount in the contract and the final account	<b>1.386.405 DM</b>

Komisija je odabrala kao najpovoljnijeg izvođača "KROLING" D.O.O. Danilovgrad.

Ugovor je sklopljen sa "KROLING-om" D.O.O. Danilovgrad 05.09.2001. godine na iznos 997,999,89 DEM, za izvođenje radova na rekonstrukciji krova i izgradnji potkrovlja. Anex-om 11 ugovora broj 01-031/02-2840 od 19.02.2002. godine ugovoreni su nepredviđeni i naknadni radovi na izgradnji potkrovlja na iznos 246,879,63 DEM.

Anex-om ugovora broj 01-031/02-8743 od 20.08.2002. godine ugovorena je izrada fasade u iznosu 235.564,42 €.

Izvođaču radova je po konačnom obračunu za izvršene radove isplaćeno 1.192.202,47 €.

Act of the Department of the joint affairs and affairs of local communities, Podgorica No. 17-032/03-8566 09 VI 2003

<sup>29</sup> Daily "Vijesti", July 02, 2005 : Millennium bridge finished by July 13



## 5. SELLING, BUYING AND EXCHANGING CONSTRUCTION LAND

Tenders for selling construction land can be simulated in the same manner like those for constructing objects. Specificity of these tenders is in the fact that the land value is determined by a Commission appointed by the Mayor. This is another of the Mayor's broad authorities set by law which enables him to control the process of making decisions directly influencing interests of the investors.

One of the key factors for assessing value of the land is its purpose defined by the detailed plan. This creates a huge space for corruption because the Mayor does not only appoint the Commission, but also initiates the plan development. In that manner, he can influence changing the land's purpose through changes and adjustments of the spatial or detailed plan and provide selected investors with an opportunity to gain significant profit through the difference between the prices of land.

After selling, construction land can be bought again if the Municipality has interest for that. Corruption may occur while setting the price, selling, new assessment of the land's value and purchasing it again.

Corruption may also occur in process of exchanging the land if there is no public control over the decision making processes. Discretionary authorities of the Mayor enable misuse of power and exchange of land of lower value for construction land.

### **CASE STUDY 25: Trade of Land in Grbalj**

On the 7<sup>th</sup> of July 2004, the Local Parliament of Kotor reached a Decision on selling the municipal land<sup>30</sup> in Grbalj through an open bid. The Decision referred to 483,488 m<sup>2</sup> of land in communities of Višnjevo and Krimovica near the Trsteno beach and the place called Platamuni. According to the spatial plan of the municipality, the land was intended for construction of hotels and other tourism facilities.

From mid 2002 to 2004, the Municipality of Kotor was governed by the coalition of LSCG-SNP-NS. The Decision on selling the land was reached unanimously with three MPs of DPS that were abstained. The Decision was signed by Mr Nikola Samardzic, at that time the Mayor of Kotor.

On the 22<sup>nd</sup> of June, the Municipality of Kotor issued a call for collecting bids for the land<sup>31</sup> with the starting price of 7.24 per m<sup>2</sup>, i.e. approximately 3.5 million of euros for the complete area. Bid submission period was 30 days, expiring on the 22<sup>nd</sup> of July 2004.

On July 17<sup>th</sup>, one of the member parties of the governing coalition, SNP, asked the Mayor of Kotor to terminate the tender because of a violation of the procedure in the implementation of the Decision. It was defined by the decision that the land should be sold using an open tender but not through collecting bids. SNP pointed out that Mr. Samardzic did not even appoint a Commission for monitoring public tender procedure, and that the tender was not published in Official Gazette.

Another member of the coalition, Narodna stranka, welcomed the intention of the Mayor to sell the municipal land saying that demands of the SNP to terminate the tender were without any ground.

The Commission for assessing the bids stated in its report that the first-ranked bid was the one of the "Helkom Investment" Company from Podgorica that offered 5,801,856 Euros for the land, while the second-ranked was the company K.P.M. "Limited" also from Podgorica with 4,399,740 Euros. Bids of the companies "Splendid Hotels Group" from Budva and "Vilend MT" from Moscow were not submitted timely and were returned to these bidders. All four bids were submitted on the 22<sup>nd</sup> of July. The bid of the K.P.M "Limited" company was received at 12:52 PM, "Helkom Investment" at 12:59PM, while bids of "Splendid Hotels Group" i "Vilend MT" were received at 13:02 PM.

According to data of the Central Registry of the Commercial Court in Podgorica, the first-ranked company, "Helkom investment" was founded by two Russian citizens on the 1<sup>st</sup> of July 2004, just after the tender for selling was issued<sup>32</sup>

<sup>30</sup> Official Gazette of Kotor Municipality, June 9th 2004,

<sup>31</sup> Commission for Public Procurement, <http://www.nabavka.cg.yu/okotor220604.doc>

Rank	Company	Headquarters	Bid (in €)	Bid received
First-ranked	"Helkom Investment" DOO	Podgorica	5.801.856	12.59 PM
Second-ranked	K.P.M. "Limited" DOO	Podgorica	4.399.740	12.52 PM
Returned to bidders	"Splendid hotels group" DOO	Budva		13.02 PM
	"Vilend MT"	Moscow		13.02 PM

The Company "Splendid Hotels Group" from Budva, whose bid had been rejected, submitted a complaint on the 30<sup>th</sup> July 2004 to the the Municipality of Kotor that was later rejected by town authorities. After that, this company approached the Commission for Public Procurement.

Administrative inspection of the Ministry of Finance and the Ministry of Justice paid a visit to the Municipality of Kotor and went through all the documentation regarding selling of the land. Findings did not show any irregularities in the procedure<sup>33</sup>.

On the 26<sup>th</sup> of August 2004, SNP has submitted complete documentation related to selling of the land to the Supreme State Prosecutor and Commission for Public Procurement and asked their opinion on this issue.

At the end of August, public company "Morsko Dobro" entered the affair. Director of this company, Mr. Rajko Barović, said that a part of the land that is intended for selling belongs to the coastal area. He also invited the Supreme State Prosecutor to take part and investigate the process of selling the land.

At the beginning of September 2004, a major political crisis within the political party LSCG occurred after accusations of the legal representative of the "Helkom Investment" company that he was asked by president of that party, Ms Vesna Perović and its high official, Mr. Saša Marković, to pay one million euros for closing the final agreement on selling the land in Grbalj.<sup>34</sup> After that, accusations started among members of the LSCG targeting political leader, Mr. Miodrag Živković and Mayor of Kotor, Nikola Samardžić for concluding a harmful business agreement.

"Helkom Investment" company submitted an appeal against Ms Vesne Perović i Mr Saša Marković to the State Prosecutor for an attempt to extort one million euros. In the appeal elaboration it was stated that Ms Perovic and Mrs Markovic "threaten this company with cancellation of the land selling procedure"<sup>35</sup>

After expiration of bank guarantees, "Helkom investment" company withdrew from buying the land.

On the 23<sup>rd</sup> of November 2004, the Mayor of Kotor made an agreement about selling the land with K.P.M. Limited for 4.4 million euros. These funds were put on hold until the final conclusion of the state institutions on the legality of the whole process.<sup>36</sup> K.P.M. Limited was registered on February 16<sup>th</sup> at the Commercial Court in Podgorica. The founders' residence is in Cyprus<sup>37</sup>.

DPS took over the governance of the municipality after the local elections at the end of December 2004.

At the beginning of January 2005, investigation was launched about the role of former Mayor of Kotor, Mr. Nikola Samardžić, and members of the Commission for determining market value of the land in the process of selling the land in Grbalj. At the same time, the Supreme State Prosecutor, Ms Vesna Medenica, opened an investigation on Ms Vesna Perovic, president of the LSCG responding to the appeal of the "Helkom Investment" company.

The first hearing in the case of selling the land in Grbalj was held on February 15<sup>th</sup> 2005 in Podgorica. Prosecution maintained their position that the contract had to be terminated while legal representatives of the K.P.M Limited claimed that the agreement was concluded in compliance with the Law on Public Procurement. External audit firm "Finex" from Belgrade conducted a new assessment of the land value and concluded that the real value was between 6 and 8 euros per square meter. KMP Limited paid 9.1 euros per square meter.

While the court proceedings were still ongoing, in February 26<sup>th</sup> 2005, the local office of the Public Revenue Agency in Kotor requested from K.P.M Limited to pay the tax on the land in the amount of 87.995 Euros.

<sup>32</sup> Data from Central Registry of the Commercial Court, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50219314](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50219314)

The Basic Court in Podgorica, on April 11<sup>th</sup> 2005, rejected the request of the Supreme State Prosecutor, Ms Vesna Medenica, to terminate the contract on selling land in Grbalj. At the beginning of May, Medenica filed an appeal to the Higher Court, emphasizing that the Government of Montenegro was the only body entitled to decide on selling that particular land. The Higher Court rejected her appeal.

On July 7, 2005, Ministry of Finance issued an act (No 01-4488) stating that owner of the land in Grbalj is the Republic of Montenegro, but Municipality of Kotor has the right to use it. In act, signed by Minister Igor Luksic, is underlined that interest of the Republic of Montenegro was endangered by selling the land.

The case is still ongoing.

### CASE STUDY 26: Exchange of Land

On September 7<sup>th</sup> 2001, during his mandate as the Mayor of Podgorica, Mr. Miomir Mugoša, asked the Agency for Property Affairs to remove the limit of “usurpation” of state land from parcels No 60 and 62/2, as well as the limit of “constructing without license” of the parcel No 61.

A day later, on 18<sup>th</sup> of July 2001, the Agency issue an act, splitting the parcel No 60 into parcels No 60/1 i 60/2, and registering Mr. Miomi Mugoša as the owner of the parcel No 60/1, and Municipality of Podgorica as the owner of parcels No 60/2 and 62/2.

The Board of Trustees whose member was Mugosa as well, on August the 2<sup>nd</sup> 2002, reached a decision allowing the Agency to conclude contracts in exchange of the land under defined conditions.

While he was still a member of the Board of Trustees, on September 13<sup>th</sup> 2002, Miomir Mugoša asked to exchange his private land (6035 m2) with the land of the Municipality of Podgorica – parcels No. 60/2 and 62/2, parts of the parcels 23/1, 37, 38, 41, 59 and 112 in the area of Tološi for the land of equal area– parcel No 4369 Donja Gorica, parcel No. 4797 and 4798 in Tološi. The land was exchanged in the ratio 1:1.

Local elections after which Miomir Mugoša was inaugurated as Mayor of Podgorica were held on November 20<sup>th</sup> 2002, while the contract on exchanging the land was signed on February 10<sup>th</sup> 2003.

Parcel	Situation until 18 IX 2001	Request for exchange 17 IX 2001	Changes	Situation after 18 IX 2001	Request for exchange 13 IX 2002	Changes
No 60	4030 m2 of land usurped, out 6535 m2 of total area	Limit removal: Usurpation	Splitting parcels into 60/1 (2505 m2) and 60/2 (4030 m2)	60/1 – Mugosa registered as owner 60/2 returned - Podgorica Municipality registered as owner PG	Exchange for land of equal area	60/2 – Mugosa registered as owner
No 61	Constructing without permit on parcel of 2505 m2	Limit removal: constructing without permit	Certificate of an expert that the object was built in 1969 on the basis of a record from 1972	61 - Mugosa registered as owner , Limit removal		
No 62/2	Land usurped, parcel of 206 m2	Limit removal: Usurpation	Municipality again owner– change of registry	62/2 returned– Podgorica Municipality registered as owner	Exchange for land of equal area	63/2 – Mugosa registered as owner

General public was never informed on what was the purpose of the land that was previously owned by Miomir Mugoša, or what was the purpose of the land that was exchanged for. Criteria for making a decision on the exchange of land have still not been presented.

<sup>33</sup> Daily “Vijesti”, July 31<sup>st</sup> 2004

<sup>34</sup> Daily “Vijesti”, September 4<sup>th</sup> 2004

<sup>35</sup> Daily “Vijesti”, September 5<sup>th</sup> 2004

<sup>36</sup> Daily “Vijesti”, December 2<sup>nd</sup> 2004

<sup>37</sup> Data from Central Registry of Commercial Court, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50202463](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50202463)

## 6. ILLEGAL DEVELOPMENT<sup>38</sup>

### 6.1. Stimulating Illegal Development

According to local governments' estimates there are 20,000 illegally constructed objects in Podgorica and Bar respectively that are built on the municipal land and there are no data on the total number of illegally constructed objects for the whole territories of the two municipalities. Budva was completely ruined by illegal construction and it is impossible even to make such estimates for this town. Illegal construction took place in the areas that have been covered by the urban plans as well as in the areas where such plans were not developed, as well as areas of special importance such as coastal zones and national parks.

Construction of apartment buildings has taken full speed, a number of multiple-floor building are being constructed without building licenses and people are moving into those apartments without the usage licenses, which has devastating consequences on the space and the environment. Official data have not been published and it is estimated that 80% of object constructed in the past 10 years in Montenegro do not have construction license and/or inspection certificate.

Existing infrastructure and services often cannot bear the pressures created by inhabitants of new constructed buildings, which has a negative impact on the quality of life and increases the risk for the surrounding buildings.

Illegal construction significantly decreases potentials for tourism development and makes it difficult to properly value such potentials. It hinders development of coastal towns, development of infrastructure and tourism facilities. It is particularly difficult to resolve problems with water supply and sewage that are caused by these illegally constructed buildings. Illegal construction is taking place in the nicest summer resorts on the coast, such as Sveti Stefan, and construction of objects in national parks, such as Skadar Lake and Durmitor, is not only impeding tourism development but also destroying the environment.

Key causes of the lack of law enforcement and increase of illegal construction are: lack of plans, war and conflicts in the region and large influx of refugees and IDPs, low standards of life and efforts to maintain social peace through silent approval of illegal actions, frequent elections and corruption in all segments of the system.

One of the theories is that local governments have purposely encouraged illegal construction because they did not have funds for development of plans and construction of infrastructure. In cases of illegal construction, the investors had to pay for water pipe system, electricity, phone installations, roads and related services and local governments did not guarantee the quality of infrastructure. Although the Law on Construction of Objects states that connection of illegally constructed objects to the existing infrastructure is a criminal offence, entire blocks of illegally constructed objects have been connected to all services and have thus been practically legalized by state institutions.

Budget funds have been used to build schools, kindergartens and streets in some of those blocks, usually during election campaigns when all parties make promises that all the objects will be legalized.

#### CASE STUDY 27: "Simo Milosevic" Institute <sup>39</sup>

**November 2003** – Management of "Dr. Simo Milosevic" Institute confirmed at the press conference that they have illegally constructed the water supply system and connection and that they do not have usage license for that system.

Institute's Executive Director, Dr. Branislav Radojicic, expressed his hope that no one would demolish such a capital object, i.e. that the water supply system could be legalized.

<sup>38</sup> A part of the issues of illegal development was addressed in Chapter 4: Licenses

<sup>39</sup> Daily "Vijesti", November 1, 2003: "Water supply system accessed illegally in order to keep the Institution operational"

### **CASE STUDY 28: Pharmaceutical Factory**

On June 22<sup>nd</sup>, 2004 Milorad Raznatovic, member of the Municipality of Podgorica Local Parliament stated that “Novit Pharm” Company submitted to the Municipal Secretariat for Urban Development and Construction a request for a modification of the Spatial Plan so to allow construction of facilities for production, storage and sale of medicines i.e. pharmaceutical products which, as he said, had already been built.

Decision on modifications and amendments of the Municipal Spatial Plan related to the section of regional highway from the bridge on Matica River to Danilovgrad Municipality was adopted at the Podgorica’s Local Parliament session of the 26<sup>th</sup> of December 2003.

Questions asked by the Local Parliament members and the Secretariat for Urban Development’s responses:

Q – Is it true that the “Novit Pharm” Company has already completed construction of this facility and if so, did the Secretariat issue the building license and when?

A – On the 7<sup>th</sup> of July 2004 the Ministry of Environmental Protection and Urban Planning informed the secretariat that “Novit Pharm” Company did not have the building license. On the 19<sup>th</sup> of September 2003 the Republican Inspection did not allow the construction. As the investor continued with the works and did not obtain all the necessary documentation, a decision to stop the construction was issued, followed by a decision to execute the order on 12<sup>th</sup> of December 2003. (Note from the author: the facility has still not been demolished)

Q – Are the waste waters emitted from the facility dangerous to the environment and specifically to the surrounding waters? In this concrete case, if the competent body gave a positive response to the company’s request, can that lead to a contamination of the Mareza water spring and the underground waters, thus seriously putting in danger lives and health of Podgorica citizens?

A – In line with the request sent by the Secretariat for Communal and Housing Affairs on the 25<sup>th</sup> of June 2004, the Ministry of Agriculture did not provide a response.

Q – How many objects have been constructed in this area, what purpose are they used for and have issues related to waste waters been dealt with? Precisely state whether the constructed objects are in the area of the Mareza water spring.

There was no response to this question.

According to the data from the Commercial Court’s Central Register Novit Pharm was registered on the 16<sup>th</sup> of June 2004 and its founder was a company from Marshall Islands <sup>40</sup>.

### **CASE STUDY 29: Illegal Development Report of the Secretariat for Spatial Development of Budva**

In the report of the Commission for measuring objects in the Municipality of Budva there is the information that in period from the end of 1997 and beginning of 1998 3313 objects were constructed. Out of this number 781 or 23% possess construction license, while 2532 (77%) objects do not. There are no data on detailed plans of Sveti Stefan and Petrovac where illegal development is most frequent.

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<sup>40</sup> Data from Central Registry of the Commercial Court, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50182540](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50182540)

### **CASE STUDY 30: Island of Sveti Nikola in Budva**

#### **Information about Investor**

Nenad Đorđević is one of the founders of the JUL political party and a close friend of Ms Mira Markovic, wife of Slobodan Milosevic and employee of the Agency for National Security.

According to the sentence of the Supreme Court of Serbia from 2003, Mr. Đorđević, a former director of the National Health Fund of Serbia, concluded a harmful contract with the company "CIT" from Liechtenstein on import of computer equipment for the Health Fund. Prosecutor claimed that Mr. Đorđević, by abusing the power, took over five million Euros for himself and owner of the "CIT" Company. Đorđević now lives in Italy.

In Montenegro he owns 7000 m<sup>2</sup> of land on the island of Sveti Nikola, widely known as Montenegro Hawaii, and the hotel "Admiral" in Budva. Đorđević asked for the detailed plan to be developed for the area of the mentioned island and even offered to finance development of the plan.

#### **Information on Illegal Development**

In the analysis of illegal development, conducted by the Ministry of Maritime and Traffic and Ministry of Spatial Planning and Development, there is a claim that the Company "Admiral" from Budva "started illegal construction works on two hotels, a marine and a beach on the "Hawaii" island resulting in a complete change of the landscape".

According to the official information of the state institution, building of two hotels and a marine started while the construction of the 750 meters of jetty was completed, together with 850 meters of the new beach. According to the analysis, at the end of 1999 Đorđević started with huge construction works by placing bulky concrete blocks on the western part of the island, while on the northern part, a concrete jetty was constructed.

By the Decision of the Republican Construction Inspection from 2000, construction works on the island were banned, but they also filed an appeal against Đorđević as the investor. However, by the end of 2000, construction works on the island continued by building a marine as well as works on broadening the beaches. This time Republican Water supply Inspection and Maritime Inspection reacted and banned further construction works.

At the end of 2001, activities were shifted deeper into the island, where construction of several objects began. Republican Construction Inspection conducted and completed the administrative procedure on the construction of objects on the northern part of the island of the total area of 600 m<sup>2</sup> where ground floor, first floor and pillars of the third floor were constructed.

Inspectors also opened the case because of construction works on the northern part of the island, where an object that was constructed had 72 m<sup>2</sup> in foundation with pillars and walls on the ground and the first floor completed.

#### **Pulling down of the Objects on the Island**

In their second attempt, on January 29, 2002, the Construction inspection pulled down a part of the third illegally developed object that was build next to the marina on the island. The first attempt was carried out on June 16, 2002 when the inspection stopped the demolition of the object. After that, director of the public company "Morsko Dobro", Dragan Ivančević said:

"I am surprised by this act of the Ministry, since they were the one that issued licenses for temporary objects in the first place, while we approved of the construction of the beach. I think that this is not the right time to pull down the objects, but all usurpation of the state property should be severely sanctioned after the summer season. – No one can tell me that June 15 is the right time to conduct demolition using 30 kilos of explosive.

After demolition of the objects, Nenad Đorđević said that he had already invested over 15 million euros in the island and that all of that was done for the purpose of the tourism development. He also added that his legal advisers will consider filing appeals.

"Before I started constructing on the island, I asked the highest state institution if they need my investments in Montenegro and their answer was affirmative with a promise that will get all the necessary documents. The land on the island is mine and general plan defines construction of a marine and catering facilities. State institutions are those that are unable to develop planning documents. That is unacceptable for any investor" – said Đorđević.

**"I am the only man in Montenegro who succeeded to broaden its territory by two hectares by creating new beaches without weapons and war, and they should be at least thankful for that."  
Nenad Djordjevic, businessman, July 2002**

### **Blocking the street as a response to demolition of the Fence**

In June 2003, Municipal Construction Inspection pulled down the illegally developed fence around Mr. Đorđević's hotel "Admiral". Back in 2000, the Basic Court in Kotor determined that the fence was built on the property of the "Belgrade Brewery". As an act of protest, Đorđević unloaded two trucks of rocks in front of the hotel "Admiral" and blocked the largest pedestrian lane in that settlement.

Mayor of Budva, Vesna Radunović, said the fence was pulled down because Mr. Đorđević blocked the street "that in fact is his private property but he choose a very brutal way to show it". Representatives of the municipality said that Mr. Đorđević would be forced to remove the rocks, but they still needed to find a legal ground for that, since the land was his private property.

### **Request to the Ministry of Spatial Planning and Development**

In September 2005, several NGOs from Budva requested from the new Minister of Spatial Planning and Development to solve the problem of illegal development on the island of "Sveti Nikola". In an open letter to the Minister, NGOs said that Đorđević had illegally transformed agricultural land into construction land and, using the most primitive manner – using concrete on the shore, ruined the coast, approximately 700 meters of beach and sea flora and fauna. They added that Đorđević occupied 10.000 square meters of the sea area, on the property of the Republic of Montenegro and public company "Morsko dobro". He did all that in front of the eyes of the Republican Government that you represent now. "You are the fourth Minister that is avoiding responsibility for the case of the island of "Sveti Nikola"

### **Draft Spatial Plan of the Coastal Area**

Company "Montecep" from Kotor was selected by the Ministry of Spatial Planning and Development to develop a spatial plan of the coastal area. At the beginning of 2005, this company issued a draft document that was submitted to public hearing process.

Municipality of Budva, representatives of local NGOs and famous architects and citizens asked the Ministry and "Morsko dobro" to redraw the plan from the procedure, claiming that its purpose was to legalize illegal development on the island "Sveti Nikola" and saying that the construction of the marine would endanger the complete area of Bay of Budva.

Recognizing that illegal development after all existed on island, deputy director of "Morsko dobro", Mr. Dragan Marković said that plan would be used to solve those problems.

At the end of February, representatives of more than 50 NGOs from the coast signed a petition for withdrawing of the Draft Spatial Plan from the procedure. It was said that "the plan is not in compliance with the Law on Spatial Planning and Development as well as with the Spatial Plan of Montenegro and spatial plans of several municipalities". They also claimed that the purpose of the plan was just "to select seven locations for the benefit of small interested group of people gathered around "Morsko dobro" that even tries to legalize illegal development on the island of "Sveti Nikola".

NGOs started collecting signatures for changing the Law on Morsko Dobro and redrawing draft plan from the procedure.

Spatial plan for coast area has not been adopted yet.

**CASE STUDY 31: Connecting illegally developed objects to technical infrastructure**

According to the Law on Constructing Objects, connecting construction site or the object that is being constructed or object that is built without construction license to technical infrastructure represents a criminal offence.

Responsible institutions provided connection to power and water supply systems to a large number of illegally developed objects and the Power Supply Company even issues bills with a note: "illegal consumer".

ЕЛЕКТРОДИСТРИБУЦИЈА ЦРНЕ ГОРЕ А.Д. НИКШИЋ						ИЗВЈЕШТАЈ О УПЛАТИ									
Електродистрибуција ПОДГОРИЦА 19						Електродистрибуција									
РАЧУН БР. 07-2004 ДАТУМ 31.07.2004						ПОДГОРИЦА 19									
НЕЛЕГАЛАН ПОТРОШАЧ						СТАН 9									
Прет. бр. _____						Прет. бр. 19-911407 5									
Потрошач _____						Бр. рач. 07-2004									
Адреса _____						Дат. рач. 31.07.2004									
Датум читања _____						Дат. уруч. _____									
Жиро рачун _____						Телефон _____									
Датум читања						Старо стање В1		Ново стање В1		Старо стање В2		Ново стање В2		Бора стање	
31.07.2004						7458		8362		788		788		9	
шиф	Потрошња	Цијена	шиф	Потрошња	Цијена	шиф	Потрошња	Цијена	шиф	Потрошња	Цијена	шиф	Потрошња	Цијена	
01	232	0.044276	02	472	0.022138	10	9	0.487708							
шиф	%	Износ	шиф	%	Износ	шиф	%	Износ	шиф	%	Износ	шиф	%	Износ	
20		25.11	21		0.81	42	13.0	3.37							
61	5	1.30	51	17	5.20										
											RN 07		35.79		
											DLIG		51.30		
Рок плаћања _____ дана											За уплату:		87.09		

Power supply bill for an object that was built without construction license, calculated and issued by the Power Supply Company of Montenegro

**6.2. Legalization**

The lack of criteria and procedures for legalization of illegally developed objects in the existing Law, together with broadly set discretionary authorities of the officials and lack of transparency of the whole process create a favourable ground for development of corruption. A public servant that can influence development of the plan, legalization of the existing object and issues constructing licenses is in a position to enable investors to realize their interest since there is no control over his work.

In cases where public does not have control over the process of legalization of an object, bigger investors are in a more favorable position since they can offer more money for "services" of a public servant. On the other hand, large number of illegally developed objects are preventing fight against illegal development and eliminate individual responsibility of the inspector, which additionally stimulates even more corruptive behavior.

There is a trend of legalizing huge apartment/business buildings in Montenegro, while majority of owners of the individual houses are under constant threat of demolition. A large number of illegally developed objects implies that many citizens violate the Law, which makes them sensitive to any kind of manipulations, pressure and using their status for blackmailing them while reaching political and other decisions.



**CASE STUDY 32: Conclusion of the Mayor of Podgorica**

On the basis of the Conclusions and the Conclusions on Amendments to Conclusions of the Mayor, illegal investors were given the opportunity to obtain temporary working permits for objects whose documentation was not in compliance with the valid planning documentation, i.e. illegally developed objects.

By implementation of these acts, the Municipality of Podgorica violates the Law on Spatial Planning and Development that defines that object cannot be operational before obtaining inspection certificate. Applying Conclusions to objects of more than 1000m<sup>2</sup>, the Municipality takes over responsibilities of the Ministry and actually legalizes illegally developed objects. This is particularly dangerous in case of objects whose operations require adherence to special provisions, like gas stations and slaughter houses that also got temporary working permits from Municipality of Podgorica.

In some cases, Podgorica Municipality concluded several contracts with the same investors, therefore stimulating them to continue with illegal development.

Year <sup>41</sup>	Investor	Contract No.	Legalized area in m <sup>2</sup>
2000	Dukanović Miodrag	9702	1286
2001	Context	3762	2052
	Ave Marija Kolčević	7079	1692
	Nivel DOO	7651	1973
	Klikovac Dj.Krstović Z.	9497	3348
	Preduzeće Top Art	10068	1680
2002	Čelebić Company	694	2615
	Real Estate Agency	704	2712
	Vujošević Branko	2607	1173
	Vukčević Željko	2619	1198
	Stanaj Roko	6518	1137
	Alivodić Ferid	6651	2762
	Mitrović Predrag	7558	1332
2003	Ave Marija Kolčević	250	2932
	Bonita Trade	579	1075
	Normal Company	6500	4330
	Crnagoraput	8991	1453
	Medenica Petar	87	2778

Starting in 2000, actual legalization of illegally developed objects was conducted by the Municipality of Podgorica using Conclusions of the Mayor, acts that were not public. This additionally broadened his discretionary authorities and created favorable environment for corruption.

Only privileged investors, familiar with Conclusions, could legalize their objects, while lack of public control enabled that some investors do not have obligation to pay taxes. (More details in Case Study 18 – “Imanje Knjaz”)

Conclusions of the Mayor are putting out of the force provisions of the Law on Spatial Planning and Development and violate the Law on Local Self-Governance defining that municipality is obliged to organize public hearings on all acts that regulate rights and responsibilities of the citizens. On November 9, 2004, NGO MANS submitted to the Constitutional Court an initiative for legal assessment of the Conclusions. Constitutional Court has remained silent for 10 month now.

Year <sup>42</sup>	No. of concluded contracts	Total in m <sup>2</sup>
2000	9	3.448
2001	64	20.614
2002	50	26.824
2003	27	16.729
2004	12	3.872
<b>Total</b>	<b>162</b>	<b>71.487</b>

<sup>41</sup> Data from the answer of the Municipal Administration to a local MP question, 24 XII 2004

<sup>42</sup> Data from the answer of the Municipal Administration to a local MP question, 24 XII 2004

**CASE STUDY 33: Legalization of Objects through Plan Changes: DTP “Momišići A”<sup>43</sup>**

Construction of the apartment/business building near the Dairy in Podgorica was stopped at the beginning of March 2005 due to changes and amendments of the DTP “Momišići A”

According to the investor, the object was designed to have five floors and with the new plan four more floors will be added with the total increase of area by 4.000 m<sup>2</sup>. “The Municipality of Podgorica chose the plan developer so we expect that changes to the plan will be soon adopted in the local parliament, after which we will obtain license for more floors”, said Kačar, the investor.

“Detailed plan for “Momišići A” must be changed. “Čelebić” building that is close to this object has nine floors, which is four more than it was stated in the project. Five years ago, decision was made to coordinate the number of floors of both buildings. If the plan does not change, they will have to pull down the “Čelebić” building”, Kačar explained.

“Čelebić” building with four illegally developed object is inhabited, and the Consulate of Slovenia and IN Television have their premises in this building.

**Example**

In a transition country with an expansion of construction activities, both by individuals and the state, a civil servant who decides on the tenders for the construction of objects established a construction company and nominates for the director a person that cannot be linked to him in any way.

The director gets the salary to sign the agreements and shows up in meetings. The civil servant takes care that the company gets jobs and this gains profit.

**CASE STUDY 34: Company “Mizomi”**

On June 23, 2004, Republican Construction Inspection sealed the floor on the apartment/business building owned by the company “Mizomi” because it was constructed against the plan.

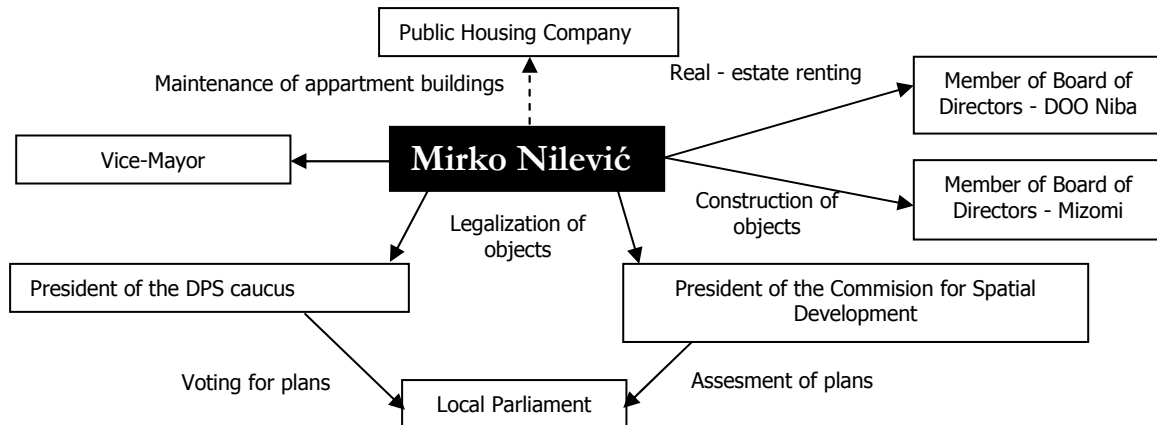
One of the owners of the company “Mizomi”, Milorad-Micko Vukotić, said that it was only a misunderstanding because, according to the changes of the plan “Nova Varoš 2”, the building should have more floors. “A possible reason for sealing the floor is the fact that changes of the plan have still not been adopted, but they will be at the next session of the Local Parliament of Podgorica”, said Vukotić, adding that other construction works will continue. On February 5, 2004, company “Mizomi” concluded a contract with the Agency for Construction and Development of Podgorica on the fee for exceeding object area by 515 m<sup>2</sup>. Detailed plan was adopted in July 2004.

One of the owners of the company “Mizomi”<sup>44</sup> is Mr. Mirko Nilević who is at the same time president of the Commission for al Planning of Podgorica Municipality, President of the caucus of DPS in the local parliament and recently was appointed the new Vice-President of the Podgorica Municipality. Mr. Nilević is also former director of the Public Housing Company of Podgorica. He is the founder and representative of the company “Niba”<sup>45</sup> dealing with renting real-estates.

<sup>43</sup> Daily “Republika”: “Construction of the apartment/business building near dairy stopped until the plan is changed”, March 9, 2005; Daily “Republika”: “Construction of the building near dairy will depend on plan changes”, April 1, 2005.

<sup>44</sup> Data from Central Register of the Commercial Court [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50142140](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50142140)

<sup>45</sup> Data from the Central Register of the Commercial Court, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50159723](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50159723)



### 6.3 Pulling down

According to the Law on Construction of Objects, local governments were supposed to register all the illegally built objects and objects without inspection certificate by the end of 2002. By the end of 2003 there were expected to legalize or pull down the registered objects. None of the local governments have fulfilled their legal obligation, which creates a legal vacuum. According to some of the laws, it also prevents pulling down of the already built objects.

Pulling down of the objects could create space for construction of residential/business objects. Since Mayor can influence change of plans, if he is corrupted by the investors he can decide not to legalize but pull down the objects of poor citizens who are not in the position to offer bribe.

In cases when there is no public control of the work of authorized bodies, when criteria and procedures for legalization and pulling down of objects are not defined or when they are defined by means of secret documents, corruption enables furthering of interests of those who can pay, at the expense of the interests of the poor.

When they are not controlled by the Ministry, local governments can abuse their authorities and violate human rights of citizens owing to the Law on Inspection Supervision which defines that an appeal does not prevent enforcement of the decision, which represents violation of the right to a just court proceedings. On January 27, 2005, MANS initiated assessment of constitutionality of that article, but the Constitutional Court has still not made the decision.

When a large number of decisions on pulling the objects down is adopted, inspectors have broad discretionary powers when deciding which objects will be pulled down and at what pace.

The Ministry of Interior is liable to offer assistance in pulling down objects without questioning legality of the decision on pulling down the object. Thus in cases when decisions of local governments are not in compliance with law or when they endanger life, health and safety of citizens, the Ministry of Interior can become an accomplice in violation of human rights.

### **CASE STUDY 35: Violation of Human Rights**

**Mini-bypass:** On January 11, 2005, early in the morning a part of the house of the Asanović family was pulled down. The demolition of the house was conducted without previous warning, while members of the Asanović family were still asleep. At the moment of demolition, two minors and two older persons were present in the house. The demolition site was secured by over 100 police officers and members of the special police force. During demolition, police blocked the main strategic road that connects Podgorica with the northern part of Montenegro.

Several days later, the construction inspection continued with the demolition of the house, again without previous warning. That time, the house was completely destroyed. Strong police forces were again securing the site and the main road was blocked for nine hours.

At one moment a bulldozer fork was less than one meter away from the family members that were standing on the balcony of the house. Ambulance team was present in the house from the early morning, providing support to older family members, while the inspection was pulling down the first floor. One of the older family member was transported to Emergency Ward.

Impact of the activities of the construction inspection on the health of the family members was noted by the doctors. The court case for compensation of damages that was initiated by the Asanović family is still ongoing.

The house was illegally developed several years ago, partly on the municipal land and the Municipality issued a temporary working permit. They claimed that the house was pulled down because it was located on the route of the future mini-bypass. Dozens of houses that are equally close to the road as the house of the Asanović family have not been pulled down.

**Tuzi settlement:** On May 20, 2005, more than 20 men, women and children, some of them disabled persons and of poor health, lost their homes when the Communal Inspection pulled down their huts.

A representative of the Centre of Social Welfare said that they could not accommodate the children that lost their homes. "We are here just to prevent possible violence on children", she said.

### **CASE STUDY 36: "KIPS" Company**

In December 2004, changes and adjustments of the detailed plan "Konik-Stari Aerodrom" were adopted. On June 6, 2005, Mayor of Podgorica issued a decision for new adjustments of the same plan, which postponed construction works for 90 days. On June 11, 2005, the Company "KIPS" that had already started with construction works was handed the demolition decision. Owner of the KIPS company claims that changing of the plan is in fact a means of the Mayor to prevent construction of the shopping centre which was defined by the original plan. The Mayor claims that his actions are legal and that the company "KIPS" is constructing illegally.

The Mayor of Podgorica about the plans: "Even though the owner of KIPS is accusing us now, the fact is that the only change of the plan "Stari Aerodrom" from 1999, when that company bought 11,000 m<sup>2</sup> of land from the Fund for Construction Land, was the change for that specific parcel. The Municipality does not hold anything against anyone, but we will certainly not adjust the plan to the needs of any individual."

Director of the company "KIPS", Mr. Risto Drekalović: "There are so many illegally developed objects in Podgorica and only rare ones are fully legal. Imagine now the kind of power that one individual can have choosing his victims according to his own will. Imagine now one hundred citizens that have illegal objects. Imagine that only at the 50<sup>th</sup> object will be required to obey the law. What do you think, will those 99 raise their voices or hold their heads down?"

Press release of the Municipality of Podgorica: "This is not the case of tyranny and destruction, on the contrary, this is about respecting law and construction rules – because the Millennium bridge says it all."

MUNICIPALITY OF PODGORICA	COMPANY "KIPS"
<b>Land on which the warehouse is located</b>	
Warehouse is on the municipal land, they pay the rent for 800-1000 m2, but use 10,000 m2	KIPS posses a contract on renting 8,656 m2 and temporary working permit issued by the Municipality
1996 – 1,600 m2 of land given for temporary usage, illegally used bigger area, in 2000 KIPS "forced" to rent 8,656 m2	KIPS was not forced, but applied on a tender after which the location was granted
KIPS is illegally using 10,000 m2 of land	Submitted request for renting additional 1.500 m2 of land to form a parcel of approximately 13,000 m2
KIPS "stole" 12,300 m2 in 2005	
<b>Paying communal taxes</b>	
Communal taxes are not paid	According to a calculation of communal taxes, the investor should be returned 41,736.23 euros".
"KIPS" owes 419,343 DM on the basis of the contract with the Fund for Construction Land	All financial obligations from the contract on communal taxes were paid in September 1999
<b>Demolition</b>	
Construction inspection pulled down the fence around the warehouse illegally constructed on the municipal land	The fence was built on rented land 6-7 years ago as one of the requirements for the warehouse
Construction inspection pulled down the ancillary object constructed without license on the municipal land	The object was built on rented land, and its demolition is under jurisdiction of the Republican, not local inspection
Communal inspection demolished the asphalt plateau of 485 m2, build illegally on the municipal land	According to the Rules on Minimal Technical Requirements for business premises where trade of goods is conducted, access should be built of solid material

### CASE STUDY 37: Department for Executing Demolitions and Company "Vinigrad" <sup>46</sup>

August 2004. During 2004, the company "Vinigrad" was hired by the Municipality of Podgorica to pull down illegally developed objects. According to the data from the Central Registry of Commercial Court, this company is registered to Ms Radmila Pavličević, wife of the head of the Department for Executing Demolitions of the Constructing Inspection<sup>47</sup>, Milorad Pavličevića, a former main construction inspector. The Municipality did not make public criteria for the selection of this company and there is no information if "Vinigrad" still provides its services to the Municipality and on what prices.

<sup>46</sup> Data from the daily "Vijesti", 14 and 21 August, 2004

<sup>47</sup> Data from the Central Register of the Commercial Court, [http://www.crps.cg.yu/Regis3PodaciCG.asp?REG\\_BR=50019370](http://www.crps.cg.yu/Regis3PodaciCG.asp?REG_BR=50019370)

## 7. ORGANIZED CRIME AND MONEY LAUNDERING

### 7.1. Organized Crime and Money Laundering in Construction Industry

In the Montenegrin construction industry there is an obvious presence of the Russian oligarchs who are especially interested in the construction of hotel capacities and residential buildings at the coast. Experiences of other countries show that this kind of business is very attractive for the organized crime structures, because they are highly profitable and favorable for money laundering, as well as that Russian criminal groups have rich experience in that field.

Inadequate implementation of laws and undeveloped national companies enable forming of monopolies and establishing control over the process of planning and developing space by the mafia. In such a situation, politics can become just one kind of business.

Montenegrin and Russian officials have confirmed several times that during the sanctions imposed on Yugoslavia money was transferred from Montenegro to Russia, and public was not informed about the amount of money and the way it had left the country, as we as if it was returned and through which channels:

- Prime Minister, Milo Đukanović, October 6 2004: "Between 100 and 150 million euros are kept outside banks or on the accounts outside Montenegro. We must encourage people to invest the money into business. If the money does not come from criminal activities or something similar, which is the task of the authorized bodies to determined within the defined legal procedure, then these people should not have any fears."
- Sergej Šojgu, Russian minister of emergency situations, October 19, 2004: "Since Montenegrin and Serbian business transferred most of their money to Russia during the sanctions, nobody in Russia said that it was dirty money obtained owing to the war. We tried to support development of the Montenegrin business as much as we could."

Since control of the property and origin of capital invested in the economy has not started functioning yet in Montenegro, the public largely fear that the money is returned and laundered through construction of objects both by the Russian and Montenegrin "winner" of transition. There are no data whether there have been any investigations of money laundering in the construction industry.

International experience show that money laundering in the construction industry is especially present in administrative and industrial centers with evident migrations of population from inland, which causes more construction activities and increases demand for homes.

Construction companies can hire immigrants in order to avoid paying taxes and fees, which enables a higher competitiveness through reduction of costs, but is also stimulating for trafficking in human beings.

#### **CASE STUDY 38: Construction and Trafficking in Human Beings in Montenegro**

There is an ongoing trial for organized crime in the Higher Court in Podgorica that started in January 2005 for the criminal act of trafficking in human beings, on the basis of the indictment of the Special Prosecutors for Fighting organized crime. According to the indictment, between April 2003 and August 17, 2004, four Montenegrin citizens were dealing with trafficking in human beings in an organized way with the purpose to gain profit.

For the purpose of abuse through a forced labour, the indicted persons made several dozens of construction workers from Ukraine to come to Podgorica. They established the company "Pavlo-V" and "Mojmilo-Kompani" in order to bring workers through these companies to work on construction sites of A.D. "Gorica and d"Lunex-monta" for two months, twelve hours a day, without any pay.

According to the indictment, one of the indicted persons, though his company and two Ukrainian citizens, illegal tourist guides, who were indicted for trafficking in human beings in Ukraine as well, put an advertisement for employing workers in Podgorica, offering a salary of between 500 and 1,000 euros a month. The interested workers had to pay 800 euros, allegedly for passports and illegal stay and work in Montenegro. They were transferred to Montenegro by busses, where their passports were taken away from them immediately. They were kept in the huts of A.D. "Gorica" on basic food. When the workers asked for their salaries, they were threatened that they would be deprived of food and accommodation if they refuse to work or that they would be abused. Thus, they were kept in the position of slaves, according to the indictment.

### **Sicilian Mafia or Cosa Nostra**

The Sicilian Mafia formed in the mid-1800s to unify the Sicilian peasants against their enemies. The Sicilian Mafia changed from a group of honorable Sicilian men to an organized criminal group in the 1920s. In the 1950s, Sicily experienced a massive building boom. Taking advantage of the opportunity, the Sicilian Mafia gained control of the building contracts and made millions of dollars.

### **Camorra or Neapolitan Mafia**

The Camorra made its fortune in reconstruction after a powerful earthquake ravaged the Campania region in 1980. The Camorra is considered the largest IOC group with over 100 clans and approximately 7,000 members. The Camorra specializes in cigarette smuggling and receives payoffs from other criminal groups for any cigarette traffic through Italy.

### **CASE STUDY 39: Italy – Koza Nostra and Kamora**

During the period of the so-called "First Republic" (1948-1990) Koza Nostra and Kamora developed strong links with the leading Italian politicians in the ruling Christian-Democratic Party. That enabled them to extend their business activities with parliamentary approval, which was enabled by powerful figures from the political establishment. One of the most visible effects of corruption was large investments into illegal construction projects that not only caused ecological damages, but also increased a danger from earthquakes.

After the earthquake in 1980, Kamora tried to take over control over reconstruction funds. There was a constant delay in the reconstruction of basic infrastructure, schools and hospitals, while dubious construction of private houses was flourishing. This double process pointed to the success of Kamora's strategy, because it shows its influence on the process and planning and public tenders. Many new buildings were not built well enough to survive earthquakes, construction rules were neglected and there were long delays in the reconstruction. Local politicians, such as the Mayor Pagani, who opposed Kamora's interference with the reconstruction, were eliminated.

"The Second Republic" in Italy, with the most corrupted political leaders, was supposed to investigate previous cases and establish control over distribution of government funds to local and regional authorities. That did not happen until 1993/94.

Four mafia organizations suffered serious failures, including loss of parliamentary support that used to be very powerful, but they had huge resources and numerous companies. If nothing else, a large uncontrolled and dubious construction they promoted in the twentieth century represents the biggest source of vulnerability for future earthquakes.

### **CAST STUDY 40: New York – According to the Findings of the Study, Mafia Dominates the Construction<sup>48</sup>**

May 1998 – According to a study of the State of New York, organized crime participates in every stage of the construction industry in the City of New York, and mafia is so well rooted that its presence has been largely accepted by investors and providers – in some cases as a necessary evil that still offers stability and safety, and in others as an organization that can offer valuable services.

"Corruption in the New York construction industry is so resistant and open that it unavoidably contributes to the general image that the only crime is to be caught."

"The picture that appears is a picture of a long-term, resistant corruption and racketeering in literally all stages of the construction process dominated by criminal trade unions", said Ronald Goldstock, director of Forces against Organized Crime of the State of New York. "Industry is in danger of falling even deeper into the ring of organized crime and legal businesses face a danger to be pushed out".

"Large amounts of money are at stake". "Commission" of only 1% represents tens of millions of dollars a year. It is out of this reason only that the construction industry is very attractive to racketeers inside or outside the industry.

<sup>48</sup> Data taken from the article from Los Angeles Times with the same title

#### **CASE STUDY 41: Spain – Operation "White Whale"**

April 2005 – The Spanish town of Malaga has been involved in the investigation related to money laundering that could stop the construction orgy which was its economic infusion. Half of the new construction sites in Spain are on its Mediterranean shore. During the "White Whale" operation, the policy for the first time established a direct link between organized crime and explosion of the Spanish construction industry.

Operation "White Whale", the height of the eighteen-month investigation that included police forces from seven countries, caught 41 suspects and seized 251 of real estate estimated at 250 million euros including luxurious villas, weekend flats and shopping centres. Bank deposits of 30 million euros were frozen, and contents of several bank safes were seized by inspection.

Spanish police believe that they had stopped the biggest chain of money laundering in Europe with branches in the USA and Canada. Kandida Konde Pumpida, public prosecutor, describes the investigation as "the top of an iceberg". We are witnesses of a quiet invasion of mafia on our shore" he said, "and a big fish is still to be caught".

Following the traces of narco cartels, police raided the offices of Fernanto Del Valla, director of the lawyer's firm in Marbella. The police stated that he established hundreds of companies for foreign criminals so that they could invest their illegal profits and real estate in Spain. The police estimates that more than 600 million euros could be laundered through del Valla's firm, and they doubt that many more lawyer's firms along the shore is involved in money laundering.

Documents confiscated in Del Valla's firm point to the fact that large amounts of money were transferred from Jukos, Russian Oil Group, to a Dutch company and were then invested in Spain. Jukos denied to have businesses in Spain and asked for detailed information from the public prosecutor.

There are no reliable estimates as to what extent organized crime is involved in the Spanish construction industry, but Per Stangeland, head of criminology at the University of Malaga, said that the presence of criminal networks in the construction industry and real estate field cannot be denied. "That is the leading force, perhaps the most important leading force, behind the construction industry. How else can we describe that Malaga, with one of the highest unemployment rates and lowest income in Spain can have an increase in the construction of housing objects of 1,600% for five years?"

#### **CASE STUDY 42: Hotel Splendid<sup>49</sup>**

June 2005 – At the construction site of the Hotel Splendid in Budva three explosive devices were set within several days. According to media, there are shots showing the perpetrators. So far, the police have arrested several persons suspected of being involved in the explosions. The motives have not been discovered yet. There are several versions on who is hiding behind the explosions. According to one, it is a war of local construction lobbies. According to the other, it is a racket and suspicious money.

Hotel Splendid was sold to the Russian-Montenegro Company "Montenegro Stars Hotels Group" for 2.4 million euros in 2004. The same Russian-Montenegrin company bought hotels "Blue Star" and "Montenegro". "We are originally a Montenegrin firm and we remain Montenegrin", said Žarko Radulović at the press conference.

"Majority owner of the "Splendid" is Viktor Ivanjenko, former director of the destroyed Russian giant Jukos. The Montenegrin shareholder in the "Montenegro Stars" has a minority package", says for Monitor an interlocutor involved in the privatization of several Montenegrin hotels.

According to a Monitor's source, Viktor Valentinovic Ivanjenko entered the business with Montenegrin hotels through the "Rašan Investors" company registered in Switzerland.

Ivanjenko has an impressive biography. He went a long way – from the village of Koltsovka, where he was born in 1947, through the secret Russian police, to the top of the Moscow business and politics.

<sup>49</sup> Part of the article from Weekly "Monitor": Monitor research: Connection Yukos – Hotel Splendid: Mystery and explosions, Monitor, No 771, July 29, 2005.



He entered the Russian secret service immediately upon graduation in 1970, during depressive communist years. He also stayed after the disintegration of USSR, until 1993. Then he went to Yukos and became the first vice-president of this oil giant. Private empires appear in Russia in such a way that the state property came to the hands of oligarchs through suspicious privatization business. Ivanjenko became one of the Yukos's shareholders.

Russian oligarchs were then recruited from the circles in and around the government, especially from the KCG secret services.

When Putin entered the war with Yukos and the main owner of this company Mihail Hodorovski, due to unpaid taxes and other alleged suspicious jobs, the empire worth billions was destroyed overnight. But, Viktor Ivanjenko survived.

Hodorovski was sentenced to nine years of imprisonment. Lebedev is also in prison. Other shareholders of Yukos are under surveillance and many have left Russia and are hiding abroad. Only Ivanjenko with three other shareholders of Yukos has stayed in Russia.

At the time when Hodorovski was on trial in Russia, at the other end of Europe, in Spain, there was an affair whose focus was the destroyed Russian oil company. Several people were arrested last spring in Spain due to the suspicion that they laundered Yukos's money through construction and tourist businesses in Marbella.

An interesting coincidence: the large board in front of the construction site of "Splendid" has a notice reading that the construction company, the contractor, Unik Trade, in addition to Becici, has jobs in Moscow, Belgrade and Marbella.

In a text published in the weekly "Nedeljni telegraf" last year on the Russian investments in Montenegro, there was a word of the Montenegrin shareholder of the "Montenegro Stars", Zarko Radulovic, who said that his Russian partner in the oil business made millions of profit a year. "It is not true that I said that. The whole text was made up", Radulovic said to the weekly "Monitor".

Radulovic denied claims that his partner is one of the former directors of Yukos. Radulovic did not want to reply to the specific question whether Viktor Ivanjenko was the majority co-owner of "Splendid".

#### **CASE STUDY 43: Hesus Hil i Hil, Mayor of Marbella**

Hesus Hil i Hil. was the Mayor of Marbella three times and also owner of the Atletico Madrid football club.

Hil was accused of abuse of 50 million pounds sterling from public funds, links with Italian and Russian mafia and laundering of 25 million pounds sterling through private companies. It is supposed that around 372 million euros did not go through the accounts during Hil's administration in Marbella for the period 1991 – 1999.

It was not the first Hil's encounter with law. In 1969 he was sentenced to a five year imprisonment, because the housing block that he had built fell down, killing 58 persons. He was abolished by General Franko after 18 months. Because of suspicions that he redirected budget funds to his football club, he was arrested in 1999, but was released after six days.

During Mayor's Hil mandate, change of the purpose of land and issuing licenses was done on the basis of town plans that were under the authority of the local government. After 1996, when the expansion of construction started, hundreds of apartment buildings were built and sold owing to him and there are no precise data on how many houses were pulled down to provide space for housing construction.

Calling his opponents liars and scum, Hil denied that he was doing anything illegally and presented himself as a victim of the dirty campaign of his opponents. "What is my crime? I am the man who has built this city", he used to say.

He insisted that he would be the mayor of Marbella as long as citizens wanted him, but he was forced to leave the position upon the court order in 2002.

The case became unstable after 40,000 pages of documents were stolen and many computer files deleted. Fransisko Kalero, court official under investigation for the theft of documents, committed suicide.

Hil died during the trial that was dropped due to the lack of evidence.

## 7.2. Possible Scheme of Organized Crime

Owing to some legal solutions defining wide discretionary powers, inappropriate control and inadequate transparency of work, a mayor can have a possibility to put under his/her control a significant part of the process of planning and construction of object at the municipal level.

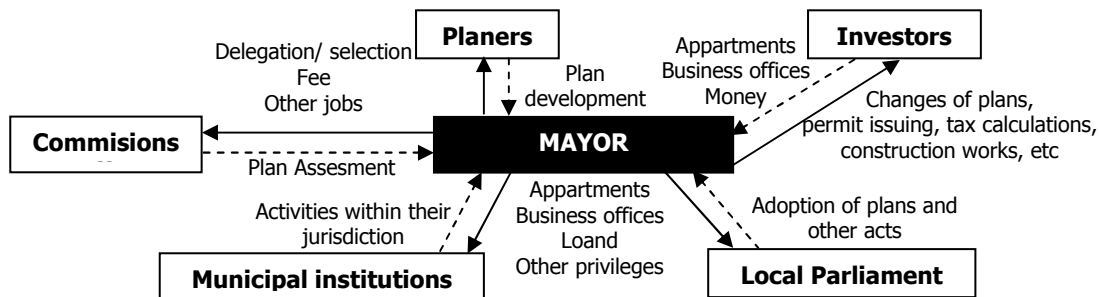
Mayor can control companies working on the plan documentation because he/she has a possibility to influence the choice of planners, amount of fees and entrust them with other jobs, such as design of project documentation or participation in the commissions for expert assessment of the plan. He/She can use planners as "designers" who add or delete objects under his orders, thus enabling or preventing the interested investors to gain profit.

He/She can influence members of the commissions for the expertise of plans, because he appoints them, decides about their fees and can also entrust them with other jobs. Commission members can be forced to give a position opinion about the plan documents because they have to count on the possibility not to be appointed again and/or be able to do other jobs for the municipality.

Montenegrin practice shows that councilors in local parliaments mainly vote for the proposed decisions, no matter how problematic they may be. That is partly a consequence of the fact that there are few of them who can look into the issues of planning and developing of space with appropriate professional understanding. In addition, the usual party discipline and personal affinities, even benefits, can have big influence on such a behavior.

Mayor of a municipality is in the position to favor certain groups of investors who will get licenses, he/she can change plans, impose lower utility services fees, sell land under more favorable conditions, decide on the contractors etc. He/She can get a percentage from the investor's profit or establish a construction company in someone else's name and then hire that company for the needs of the municipality or "recommend" the company to investors interested in construction.

Having the above mentioned in mind, a mayor of any Montenegrin municipality whose land is attractive for investors is in a danger that, similar to the Marbella case, he becomes a key link in the chain of organized crime.



### Ministry of Interior of Montenegro: Plan of Fighting Corruption and Organized Crime

Organized crime is defined as a results of activities of more than two persons whose goal is committing serious criminal acts for the purpose of gaining profit of power, along with fulfilling at least three of the following conditions:

- that each member of the criminal organization has a previously defined task or role;
- that the activity of the criminal organization is planned on a long-term basis or lastingly;
- that the activity of the criminal organization is based on the application of certain rules of internal control and discipline of its members;
- that the activities of the organization are planned and performed on the international scale;
- that in performing its activities, the organization uses violence or intimidations or that their is readiness for their use;
- that in performing its activities the organization uses political, economic and business structures;
- that they resort to money laundering and illegally gain profit;
- that there is an influence of the organization or its part on the legislative power, media, executive and judicial power or on other social and economic factors.



## **8. ABOUT MANS**

### **Vision**

Montenegro as a society of active citizens able to fulfil their social, economic and civic rights, in cooperation, at all levels, with a responsible, transparent and efficient government.

### **Mission**

MANS is a non-governmental organisation that supports the development of Montenegro and poverty reduction by promoting good governance and strengthening citizens participation in the decision-making process.

MANS is dedicated to raising public awareness of social, economic and civic rights; supporting citizens and their associations to participate actively in the development, implementation and monitoring of social policies; and promoting cooperation and the exchange of information between all social groups.

### **Values**

In all its activities, MANS promotes innovative approaches to identifying and solving problems arising from real social need, while maintaining respect for diversity and upholding the principles of transparency, openness and impartiality.

### **Strategic goals (2005 - 2008)**

1. Development, implementation and monitoring of social, economic and civic policies and legislation are conducted through real citizen's participation.
2. Implementation of efficient civic actions for combating corruption within government institutions.
3. Citizens and their associations are using and improving mechanisms for communication with governmental institutions in areas related to social, economic and civic freedoms.

Having in mind compliance and mutual dependence of defined strategic goals, MANS will use similar model that comprises:

- A. Informational - educational campaigns;
- B. Building capacity of NGOs in providing support to citizens in monitoring of implementation of policies and legislation;
- C. Mobilisation and capacity building of citizens;
- D. Improvement of quality of existing and lobbying for adoption of new policies and legislation and monitoring of their implementation in cooperation with citizens and their associations.

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