

CASE STUDY: „ENERGOPROJEKT“ AND SPORTS HALL



I: INTRODUCTION: This case study, which refers to the compensation deal between the Municipality of Herceg Novi and construction company "Energoprojekt" for the purpose of constructing a sports hall, is one of many examples of illegal disposal of municipal land at the expense of the

local budget.

II: GENERAL AGREEMENT FROM 1996: Municipality of Herceg Novi and the company "Energoprojekt" from Belgrade signed the General Agreement¹ in January 1996, in which this construction company made a commitment to build a sports hall in Igalo for the needs of the Municipality, while in return it obtained a valuable location in the city center, on the Savina hill, where it was allowed to build residential and commercial buildings and sell them in the market.

The agreement specified for "Energoprojekt" to get a permanent use of 14.5 thousand square meters in Savina, the total value of which was estimated at 6.3 million Deutsche marks or 437.5 marks per square meter (which corresponds to the amount of €3.1 million or €220 per square meter).

Clan 7.	
ENERGOPROJEKT se obavezuje da na ime uredjenja, koriscenja i trajnog raspolaganja nad dodeljenom mu gradjevinskom zemljistu plati OPSTINI 437,50 DEM/m2 prodajne površine (bez garaza i parking prostora koji se ne obracunavaju) sadržaja namenjenog trzistu, što iznosi:	
$14.500 \text{ m}^2 \times 437,50 \text{ DEM/m}^2 =$	$6.343.750,00 \text{ DEM}$

Value of the location in Savina according to the General agreement from 1996

It is unusual that the value of the new sports hall was roughly estimated in this agreement at €6.7 million. However, what was particularly controversial was a provision obliging the construction company to invest only €2.8 million marks in construction works on the sports hall by the end of 1996, while the rest should have been paid only after the company finished building residential and commercial buildings and sold them in the market. Since the sports hall should have been completed by the end of 1997, the Municipality of Herceg Novi completely unduly undertook the obligation to provide funds for the continuation of works of over 2.8 million marks, which was undoubtedly detrimental to the local interest and represented a favoritism of investors.

III: CONSTRUCTION DELAYED, ANNEXES SIGNED: A year and a half after signing the General agreement, in October 1997, the first annex² to the agreement was signed, stipulating that "Energoprojekt" had fulfilled all the obligations, and that the Municipality of Herceg Novi had provided a loan of 1.5 million Deutch marks from the government (€750,000) to continue the construction of the sports hall.

¹ General agreement regulating mutual rights, obligations and responsibilities for construction of the sports hall in Igalo and regulating construction land in location Savina, from 26 January 1996

² Annex I to the General agreement, registered in the Municipality of Herceg Novi on 30 September 1997

However, in mid-2002, the Basic Court in Herceg Novi, at the request of the Municipality, issued a temporary order³ restraining the construction company to alienate location in Savina. Rationale of the order stated that it was a common knowledge that "Energoprojekt" had not built facilities in location Savina and that the sports hall in Igalo had not been built either, indicating that the agreement was not been implemented and that the construction company had not paid the purchase price.

Čvrste je poznata činjenica, koju zbog toga ne treba utvrđivati, da na lokalitetu Savina nisu izgrađeni objekti, kao i činjenica da sportska ivorana u Igalo nije završena. Dakle, nesumnjivo je da ugovor nije izvršen. Činjenica je da je dužnik upisao pravo korišćenja-svojinje na zemljištu koje je predmet ugovora, a u ovoj fazi postupka čini se vjerovatno da nije isplati kupoprodajnu cijenu. Zašto? To u ovom postupku nije od značaja. Bitno je da cijena nije plaćena. Prema tome, povjerilac je utražio vjerovatno postojanje potraživanja - kupoprodajne cijene, kao i opasnost da će bez ove mjere, dužnik osujetiti naplatu potraživanja povjerilca, time što će svoju imovinu odužiti ili na drugi način raspolagati, čime su ispunjeni uslovi za određivanje privremene mjere iz čl. 252. ZPP-a. Prilikom odlučivanja primjenjene su i odredbe čl. 248. do 251. ZPP-a.

Extract from the temporary order of the Basic Court in Herceg Novi in 2012

IV: CONTINUATION OF AGREEMENT IN 2004: In November 2004, nine years after signing the General agreement, a new annex to the agreement was concluded⁴, by which the Municipality of Herceg Novi and "Energoprojekt" agreed to withdraw earlier initiated court proceedings for termination of the agreement and compensation for damages, and to extend the scope of the agreement.

5. U cilju iz predhodnog stava Opština će obezbediti parcelaciju katastarskih parcela 197, 74, 75, 85 i 86, sve upisane u listu nepokretnosti 494 k.o. Topla, koje su obuhvaćene urbanističkom parcelom 216 u zahvatu DUP-a "Igalo-centralna zona" i preneti pravo, saglasno Zakonu o Građevinskom Zemljištu, na tako novoformiranim katastarskim parcelama, odnosno neizgrađenom građevinskom zemljištu na Energoprojekt i to na parcelama potrebnim za izgradnju Stambeno-Poslovnog Centra (faza II iz Priloga br.1 ovog Aneksa). Prenos ovih katastarskih parcela na Energoprojekt će biti izvršen tako što će sva poreska opterećenja snositi Opština. Opština je u obavezi da prenos izvrši tako da na ovim nepokretnostima

The construction company has now obliged itself not only to finish the construction of a sports hall, but also to additionally build sport fields, facility to accommodate 70 athletes and a restaurant. In return it will acquire a new municipal parcel of over 23,000 square meters in Igalo, which municipality will previously parcel out and on which construction of new residential and commercial building will be allowed.

The value of the new compensation arrangement was €8.6 million⁵, of which the value of previously performed works on the sports hall was just over €2 million. This sum was the compensation for the site in Savina in favor of the construction company, while the remaining part of the outstanding liabilities for this site amounted to €1.6 million. When it comes to new location in Igalo, its total value was estimated at nearly five million, which means that the construction company was obliged to invest the total of €6.6 million in the construction of new facilities.

Value of compensation	Investor's liabilities	Investor's gain
	• completion of sports hall	• 13,652 m2 in Savina

³ Provisional measure of the Basic Court of Herceg Novi from 30 September 2002

⁴ Annex II to the General Contract from November 2004

⁵ Precise compensation contract is worth €8,641,382

8,641,382 EUR

- construction of sport fields
- construction of building for athletes
- construction of restaurant
- 23,400 m² in Igalo
- construction of office and residential buildings

The new agreement, signed by the former Mayor of Herceg Novi Dejan Mandic, enabled the investor to build commercial premises of 1,500 thousand square meters, 11,700 square meters of residential area, and nearly 3,000 square meters of garages in Savina, the area of which covered 13,600 square meters. Price per one square meter of land was €250, premises from €175 to €202, residential area from €117 to €135 per square meter and garage space at €117 per square meter.

When it comes to the parcel of 23,000 square meters in Igalo, the investor was allowed to build commercial premises of 4,400 square meters and the residential area of around 14,000 square meters. The determined price per square meter of land meter was €130, of office premises €135 and residential premises €90 per square meter.

		Land / m ²	Commercial premises / m ²	Residential premises / m ²	Garage space/ m ²
Location	in	€250	€175/€202	€117/€135	€117
Savina					
Location	in	€130	€135	€90	/
Igalo					

It is not known how the price per square meter of land and residential premises was determined in these extremely valuable locations on the Montenegrin coast. MANS has tried to determine whether the valuation of the land in Igalo was made and in this regard addressed the Cabinet of the Mayor of the Municipality of Herceg Novi through the Law on Free Access to Information. In its response⁶, the Cabinet stated that the assessment had not been performed, claiming that at that time there had been no legal obligation to do so.

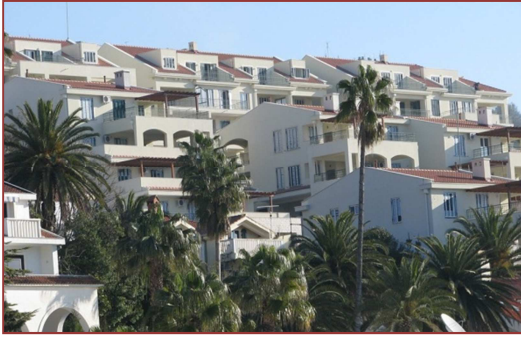
V: TRANSFER OF PROPERTY RIGHTS OVER PARCELS: In December 2005, the Agreement on transfer of rights on city construction land was signed with "Energoprojekt" over a parcel in Igalo, which covers an area of around 23,000 square meters.⁷ However, at the time of the agreement conclusion, this parcel was not a city construction land, but it was classified as a second class forest⁸, which means that the former mayor Dejan Mandic illegally disposed of the municipal land.

VI: ONLY LOCATION ON SAVINA HAS BEEN BUILT: According to official data from the website of the Real Estate Administration, the investor "Energoprojekt" has built 20,085 square meters of residential and commercial premises on the site in Savina, while in Igalo, there is only a land of 23,868 square meters, without facilities registered in the cadaster.

⁶ Response of the Cabinet of the Mayor of Municipality of Herceg Novi to MANS, from 16 January 2012

⁷ Contract refers to two cadaster parcels in KO Topla, of total area of 23,046 square meters

⁸ The Supreme State Prosecutor filed a complaint for violation of the rules of procedure to the Real Estate Administration of Herceg Novi on 27 March 2006, which stated that the Municipality of Herceg Novi had been deleted as parcels user. At the same time, "Energoprojekt" had been registered as the new user without performing a test procedure, since in this specific case, the change of registration over property, which was considered as a forest, was made



Milosevic" in Igalo, was announced.

Media information shows that the construction of settlement "Savina" was finished in 2008 and represents a separate entity, with its own streets, square and green area. xxx

Construction of the sports center in Igalo was completed in early 2008, when the construction of another complex of smaller apartments, which will be adapted for people with disabilities and those who come for treatment and rehabilitation in the Institute "Simo