



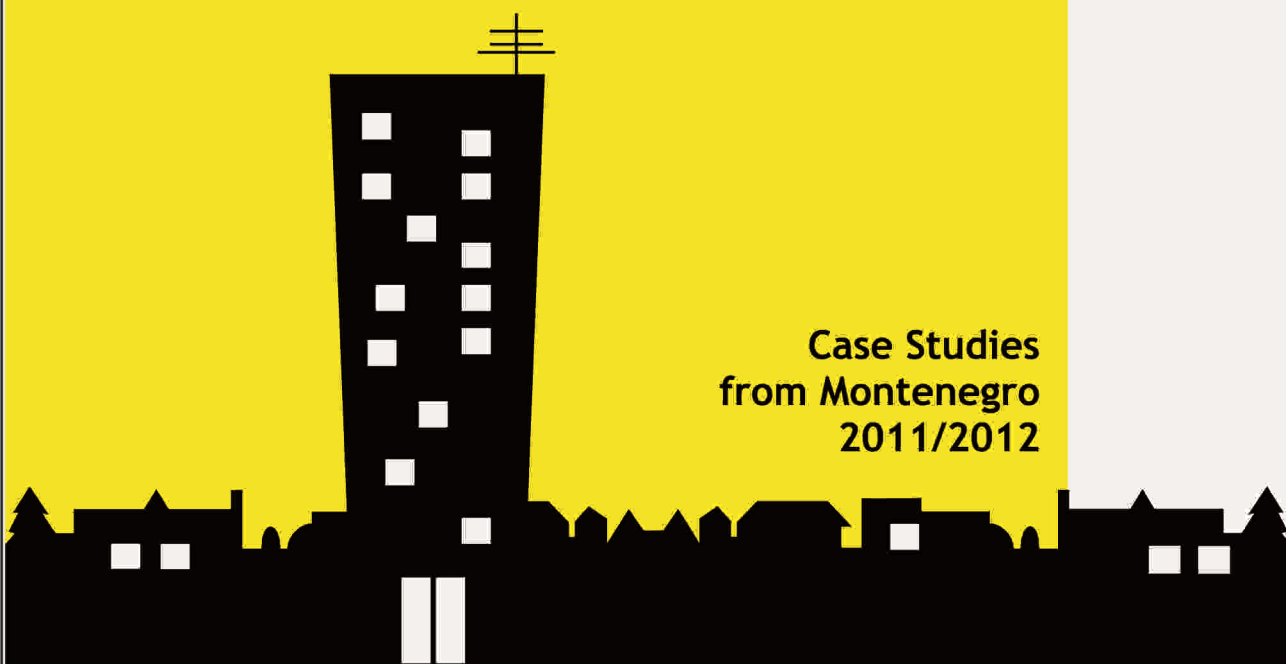
**mans**

Dejan Milovac  
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# URBAN PLANNING

## captured by corruption

Case Studies  
from Montenegro  
2011/2012



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**Title:**

URBAN PLANNING CAPTURED BY CORRUPTION - Case Studies from Montenegro  
2011/2012

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# **URBAN PLANNING CAPTURED BY CORRUPTION**

Case Studies from Montenegro, 2011/2012

Podgorica, 2012



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## 1. INTRODUCTION

This publication is a result of the 18-month monitoring of implementation of laws and regulations and investigation into the specific cases of corruption and organised crime in the field of physical planning, construction and trading with buildable land.

Monitoring and investigation done within the territory administered by the Capital City Podgorica and the six coastal municipalities (Ulcinj, Bar, Budva, Kotor, Tivat and Herceg Novi) show that the physical planning and construction processes are still largely burdened with gravest disregard for laws and rules by those responsible to protect the space at the local and the national level, but also by the so-called “strategic” investors enjoying the privilege of not always having to abide by the laws of Montenegro.

Similar situation exists in the area of buildable land management, or the disposal of such land through leasing or privatisation. In both cases it proves that the respective lease or sale agreements are rarely observed in full, but also that the competent authorities are unwilling to terminate such agreements and collect penalties for non-compliance. Instead, through the monitoring process MANS encountered numerous examples of conclusion of additional agreements, extension of deadlines, and amendments to plans stage-manage the price and buildable land value.

In addition, MANS studied the case of the Municipality of Budva and its public companies responsible for management of property owned by the city. The review shows that only some families and one political coalition are absolutely dominating the physical planning and construction processes in this coastal municipality, while specific examples and case studies show to what extent the public interest is subjected to individual interests of city and party officials and the developers affiliated to them.

We covered the issue of investors qualified as “worthy” and “protected” on various grounds through special studies that describe urban planning connections between high-ranking officials and persons recognised as members of organised crime structures. The studies show that there are no boundaries to violation of laws and regulations by public officials at the state and the local levels when such investors need to be “met halfway”.

Finally, a special section of this publication is dedicated to the lustrous example of the Mayor of Bar which shows the consequences resulting from an array of discretionary powers in urban planning and construction areas and their unlawful use for personal gain and the gain of affiliated persons.

All the data obtained by MANS during the monitoring and investigation into specific cases, which were indicative of possible corruption and/or organised crime, were filed as criminal reports to the competent state prosecutors. Some of the criminal reports lodged by MANS in the framework of this project resulted in specific investigations against certain public officials, while unfortunately most of them are still pending.



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## 2. MONITORING THE LAW ON SPATIAL PLANNING AND CONSTRUCTION

Monitoring over the implementation of the Law on Spatial Planning and Construction covered the actions taken by seven municipalities<sup>1</sup> and the line Ministry for Sustainable Development and Tourism in the planning processes, holding of public debates and adoption of plans by the local councils and the national parliament. The issuance of construction permits and certificates of occupancy, as well as inspection supervision were also monitored.

Over the 18 months of monitoring, MANS focused particularly on plan development, and the ways in which the local governments and the line ministry involved the public in decision-making, and reviewed the extent to which the information on spatial plans were available to the interested public. To this purpose, MANS reviewed in total 55 plans from all seven target municipalities and attended close to 50 public discussions considering the proposed plans.

The review of plans implied the assessment of their alignment with the plans of higher order, the investigation of possible conflict of interest between the owners of land covered by plans and the plan drafters, as well as the alignment of plans and the accompanying environmental impact studies with the pertinent current legislation. Based on the data thus obtained, MANS gave comments to plans<sup>2</sup> submitting them to plan drafters, but also local councillors/members of the Parliament (MPs) with a view of improvements in the final drafts.

The comments received were used most often for advocacy campaigns and mobilising citizens to take a more active part in physical planning and construction related decision-making. Over the 18 months of the duration of monitoring, through its activities MANS mobilised over 3,000 citizens to directly participate in discussions organised in the municipalities concerned.

Apart from the public participation in urban planning decision-making, during the monitoring MANS focused particular attention on the transparency of the overall process, or availability of information on spatial planning and construction. To that effect, MANS monitored the implementation of 26 previously adopted plans in all target municipalities. Combining applications for free access to information requesting construction permits and certificates of occupancy with the field monitoring, MANS obtained the data on the status within the plan of structures already constructed or under construction.

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<sup>1</sup> Podgorica, Ulcinj, Bar, Budva, Kotor, Tivat i Herceg Novi

<sup>2</sup> <http://www.mans.co.me/odrzivi-razvoj/komentari-na-planove/>

Over this period, MANS filed over 1,000 applications requesting access to information from competent municipal and state level institutions on construction permits and certificates of occupancy, but also other documents pertinent to construction of structures.

The buildings for which it was established they did not have construction permits and/or certificates of occupancy, MANS filed initiatives with responsible inspection services requesting actions to be taken against such irresponsible developers. Over the period, MANS filed over 460 initiatives to various inspection services, but also close to 60 criminal reports with competent prosecution offices against the investors on the count of illegal construction and serious damages to the environment.



The data thus obtained were summarised in the form of online maps<sup>3</sup> covering the planning documents from all seven municipalities. The maps contain basic information on the plan they refer to, the allowed number of storeys for the building, the site of the building covered by monitoring, the actual number of storeys as compared to what the plan says, photographs and documents regarding the construction permit and the certificates of occupancy, or initiatives filed with inspection services and responses provided by them for construction works underway, already built or occupied without holding proper certificates.

One of the key problems as regards transparency of the planning and construction processes is the fact that very few plans are publicly available notwithstanding the legal obligation imposed on municipalities and the line ministry to make all plans they hold publicly available at their web pages.

Within the monitoring process, therefore, MANS posted all reviewed plans on its web pages, but also many other plans obtained by invoking the provisions of the Free Access to Information Law (FAI Law). Currently, the MANS website features over 230 plans from the state and the local levels<sup>4</sup>.

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<sup>3</sup> <http://www.mans.co.me/odrzivi-razvoj/monitoring-gradnje/>

<sup>4</sup> <http://www.mans.co.me/odrzivi-razvoj/planska-dokumenta/>

### **3. INVESTIGATIONS INTO THE LAW VIOLATIONS AND CORRUPTION IN URBAN PLANNING**

The area of spatial planning and construction of structures is a fertile soil for corruption given the volume of capital circulating in the construction industry. This is particularly prominent in the coastal municipalities in Montenegro, but also in the Capital City of Podgorica, as the administrative seat.

Poor planning system lacking transparency and not involving the public sufficiently, low administrative capacities of local governments, and absence of political will in the police and the prosecution brought about a situation in which corruption and offences with the elements of organised crime became a systemic problem causing substantial damages to the public interest.

While monitoring the implementation of the core law and other relevant legislation governing urban planning in Montenegro, MANS encountered extreme cases of non-compliance by the very persons in charge of their implementation, but also by the so-called “strategic” partners who use the corruption-burdened planning system for unlawful extreme profit-making.

The most extreme examples of the law violations and possible corruption and organised crime cases are reviewed separately as case studies, but were also reported to relevant authorities in the form of criminal reports.

The data for such studies were gathered from several sources, starting from the institutions themselves by invoking the FAI Law, then from the members of the general public who reported law violations and possible corruption via the phone lines<sup>5</sup>, to what are known as whistleblowers, people inside the relevant institutions.

Based on the information gathered, over the period monitored MANS managed to uncover 21 individual cases bringing non-observance of laws to the extreme and indicative of corruption and organised crime not only being an integral part of the planning and construction industry, but some parts of the system being virtually embedded in such practices.

The case studies featured in the following chapters served as a basis for criminal reports to the police and the state prosecution.

Based on the information and proofs thus gathered, MANS lodged in total 20 criminal reports against high local and central government officials, but also against the private companies and investors associated with them.

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<sup>5</sup> Over the period observed, close to 400 individuals used the phone lines to report law violations or possible corruption cases. From this source only, over the 18 months dedicated to monitoring MANS filed over 230 initiatives to competent authorities in the area of urban planning asking for their intervention.



As regards the forms in which the distortion of rules occurs, MANS encountered most frequently the cases of construction without having procured the construction permit, or putting buildings into operation without prior issuance of certificates of occupancy. We also recorded the examples of unlawful granting of construction permits, not substantiated by plans and not following the statutory procedure, but also forging the data featured in plans.

Nevertheless, the gravest cases of non-compliance, corruption and organised crime referred to manipulations with the plans, or adaptation of spatial plans to match the profit-making interests of investors, either for new construction or existing illegal construction that needed to be legalised by being fitted into plans. In addition, among the extreme cases investigated by MANS there were also those referring to the sale or lease of state-owned buildable land by making the damaging deals or by disregarding the agreements made.

As a part of investigations into the corruption and organised crime in urban planning, MANS specifically dealt with the cases involving the so-called “strategic” partners frequently enabled by the local and state level authorities to go unpunished for breaking the urban planning laws and regulations.

The chapters below feature cases documenting specific forms of evasion of urban planning, construction and buildable land management laws and regulations.

### 3.1. Manipulating the plans

By monitoring the modifications to planning documents, MANS got hold of the data indicative of this process being frequently used to legalise the buildings already built, but also to substantially increase the value of land previously purchased.

Modifications of plans for the purpose of legalizing buildings is done for buildings where investors have exceeded the stipulations from the construction permit (most frequently regarding the number of storeys), thus “inserting” the actual building into the plan in order to increase the allowable height in the respective zone.

Plan modifications are also done when the disputed building that is “inserted” in the plan holds no construction permit, i.e. when the current spatial plan did not envisage any building on the given site. In such situations, the planning document “envisages” the building of the exact same size as actually found on the site, or, in case of unfinished buildings, the plan is adapted to the design of the illegally constructed building.

Unfortunately, it is not a rare occurrence that illegal construction has changed the intended land use; instead of punishing such developers and imposing measures to restore the space to the original state, the authorities would rather amend the plans and convert most often agricultural into buildable land. This was particularly noticeable in cases of illegal construction in listed areas under special protection, such as national parks and the coastal zone.

A typical example of legalising a multi-storey building by manipulating the plans is described in the case study “Kapacity & RR Inženjering” below.

On the other hand, plans are frequently modified also when it is intended to increase the value of the plot after purchase by planning new and larger buildings at the site. The pattern followed in such cases includes changing land use by converting it into buildable land, or increasing by several times the size of originally intended buildings, thus obviously increasing land value.

In case of state-owned land, there are reasons to believe that the sale of land and the subsequent modification of plans was done in agreement with relevant state authorities. The case study “Meljine” below refers to such manipulation with the plans.

## **Case study 1: Kapacity & RR inženjering**

This case shows how state agencies were abused in an orchestrated way to enable a private investor to acquire extra profits, but also to avoid criminal liability on the count of illegal construction.

On 15 January 2010 the Ministry of Spatial Development and Environmental Protection issued to two Podgorica-based companies, "Kapacity" DOO and "RR Inženjering" DOO, a construction permit for residential buildings A and B in Zone 1, as covered by the Detailed Urban Plan (DUP) "Momišići A" in Podgorica, signed by the then Minister, Branimir Gvozdenović.

The construction permit for the A building allowed the construction of a G+Te+Po+S-2+S-1+S+P+2+Pk with a gallery (a garage, a technical storage, a basement, three subterranean storeys, the ground floor, two above-ground storeys and an attic with a gallery). The total allowed gross floor area, without the garage, was 7,750.51 m<sup>2</sup> (the total of 45 flats and 8 business premises).

In addition, the construction permit for the B building allowed the construction of G+S+P+2+Pk with a gallery (a garage, a subterranean storey, the ground floor, two above-ground storeys and an attic with a gallery). The total gross floor area of the B building, without the garage, was 4,143.50 m<sup>2</sup> (the total of 39 flats and 4 business premises).

The buildings A and B share the same garage space of the total gross floor area of 3,194.12 m<sup>2</sup>.

At the time when this construction permit was granted, the valid plan for the given site was Amendments to DUP "Momišići A", adopted by the City Council of Podgorica in July 2007.

The narrative part of the plan clearly stipulates that in Zone 1, with residential units including business premises, the maximum allowable height is Su(Po)+P+2+Pk (a subterranean storey or a basement, a ground floor, two storeys and an attic).

Maksimalna planirana spratnost u okviru ove namene je Su(Po)+P+2+Pk, gradnju do maksimalne spratnosi moguće je izvoditi fazno zavisno od trenutne potrebe investitora.

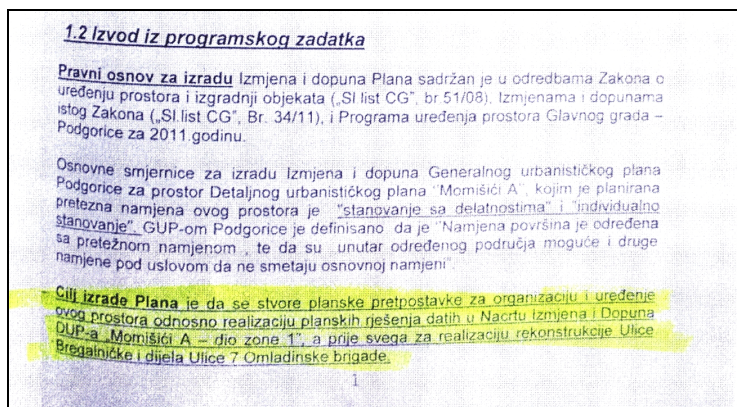
**Bruto građevinska površina prizemlja objekta » A » je 739,98 m<sup>2</sup>.  
Spratnost objekta » A » je G+Te+Po+S-2+S-1+S+P+2+Pk sa galerijom  
(garaža, tehnička etaža, podrum, tri suterena, prizemlje, dva sprata i potkrovlje sa galerijom).**

*An excerpt from the narrative part of the plan*

The above shows that the construction permit that the line ministry granted in January 2010 was in contravention to the plan, and by extension, constituted a violation of the Law on Spatial Development and Construction of Structures (LSDCS). Given that LSDCS stipulates the construction permits issued contrary to the law are null and void, it means that the investors into the two buildings of mixed use, residential and commercial, were building illegally.

Moreover, in November 2011, the Mayor of Podgorica, Miomir Mugoša, passed the decision on Draft Amendments to the General Urban Plan (GUP) for Podgorica for the area covered by the DUP “Momišići A - a part of Zone 1”, put on public discussion until 10 December 2011.

The above Draft said that the aim of the plan development was to put in place the assumptions for physical development of the given area, i.e. the implementation of solutions presented in the Draft Amendments to the DUP “Momišići A-part of Zone 1”.



*An excerpt from the Terms of Reference*

It continues by explaining that “during the drafting of amendments for the DUP “Momišići A –a part of Zone 1” an opinion by the Ministry of Spatial Development and Environmental Protection was received in December 2010, stipulating that plans need to be reviewed and aligned with higher rank plans”.

After the opinion received, the drafter reviewed the planned solutions according to “as is” situation and concluded that amendments to the GUP of Podgorica for the area covered by the DUP “Momišići A-part of Zone 1” were in order.

The Draft GUP further envisaged the intended height of buildings to be 4 to 6 above-the-ground levels (between P+3 and P+5), with maximum six above-the-ground levels, with the last story being an attic.

This leads to a conclusion that the main reason for amending the GUP in the area covered by the DUP “Momišići A-part of Zone 1” was to align with the plan of higher rank the disputed residential and commercial buildings owned by “Kapacity” and “RR Inžinjering”, to provide for their legalisation.

In addition, in reference to these buildings, on 07 June 2011 MANS launched an initiative with the Urban Planning Inspection requesting inspection supervision to see whether the construction permit was issued in accordance with the plan.

In their response of 10 October 2011, the Urban Planning Inspection informed us that the construction permit for the above residential and commercial buildings was granted in line with the "guidelines" for the DUP "Momišići A-part of Zone 1".

Finally, the City Council of Podgorica scheduled a session for 10 April 2012 with the Draft Decision to Amend the GUP Podgorica for the Area Covered by the DUP "Momišići A-part of Zone 1" and the Draft Decision to amend the DUP "Momišići A-part of Zone 1" as an item on the agenda.

This all raises reasonable doubts that Branimir Gvozdenović issued to the companies "Kapacity" and "RR Inženjering" the construction permit for two buildings in contravention to valid plans. Thus, he misused office and using his influence, enabled the investors to construct buildings which will yield them huge profit from construction and sale of flats and business premises at the market.



In addition, since such construction permit is void, it means that the investors are building illegally, thus committing the offence of illegal construction. At the same time, the Mayor Miodir Mugoša passes the decision to adopt the modified plan whose sole purpose is to legalise the otherwise illegally constructed buildings.

*Buildings owned by Kapacity and RR Inženjering*

## Case study 2: Meljine

This case study shows how the Government favoured the buyer for the military complex Meljine by enabling them to pay the property with bonds over one year. The investor bought the bonds in the stock exchange at the rate three times lower than the one recognised by the Government during the transaction, thus enabling private multi-million profits, damaging the public interest in the process.

This is yet another case in which the government sold valuable property, followed immediately by amendments to plans that should enable the now owner enormous returns, at the same time increasing substantially the value of the site.



The Military Medicine Institutions in Meljine, Herceg Novi, have a long-standing tradition and was the first hospital in the Boka Bay area, established back in 1668. In late 18<sup>th</sup> century it lost its military character and become a general hospital. The whole complex is situated in a park, a highly appealing site, on the verge of the sea, and only three kilometres away from the downtown Herceg Novi. The complex covers

the total area of 50,000 sqm and accommodates 19 buildings of total floor area of close to 24,000 sqm.

The site was owned by the Army before Montenegro's independence, when it became state property. In early 2007 the Government of Montenegro launched an international competitive tender for the sale of this site. The call for tenders asked for compliance with two fundamental requirements - the bidder had to prove at least ten years of experience in the healthcare sector and to have the annual turnover of at least 50 million euro over the past three years, and to guarantee the continuation of healthcare services delivery, retaining the current staff.

**Svi potencijalni ponudjači moraju ispuniti slijedeća dva uslova:**

1. Ponudjač mora da dostavi dokaze da se najmanje deset godina bavi zdravstvenom djelatnošću i da ima godišnji obrt od najmanje 50.000.000. € u posljednje tri poslovne godine.
2. Ponudjač ponudom mora garantovati nastavak zdravstvene djelatnosti CVMU Meljine, uz zadržavanje postojećeg broja zaposlenih.

*An excerpt from the international tender for "Meljine"*

The call elicited two bids. One was offered by the London-based company "Belfair Management", and the other by the consortium composed of the Invest and Atlasmont bank from Podgorica, the Atlas cap company also from Podgorica, and the Special Hospital for Infectious Diseases "Sveti Nikola" from Kraljevo. All the companies are ultimately affiliated to the businessman Duško Knežević.

According to the media writings, the London-based company offered 15 million euros for the purchase of the military centre and additional 30 million euros of investments over five years. The tender commission chose, as a more advantageous, the offer of Knežević's consortium over this one.<sup>6</sup> This offer involved the 25 million euro as the purchase price and the investment package of additional 118 million euros to be invested over seven years.

The contract with the consortium was officially signed on 19 June 2008, or a year after the Tender Commission selected this bid and decided to launch negotiations. On behalf of the Government as the vendor, the agreement was signed by the then Finance Minister Igor Lukšić.

The total purchase price was 25,1 Mill euros. The agreement envisages it would be paid out in bonds, and the consortium was obliged to pay 30% of the purchase price within 7 days of the agreement signature, and the rest before the Closure Date. This was set at six months from the signature date with the possibility of extension, two times by 90 days; hence, the final deadline for full payment was one year, or June 2009.

Enabling the payment in bonds, the Government directly favoured the consortium of Mr Knežević, and on the other hand there are serious doubts as to damages to the public interest. Namely, back in September 2007, the Government issued restitution bonds of nominal value of one euro for one bond and the validity period until 2017.

However, the market value of such bonds was in the range of some 35 cents. It means that the affiliated companies of Duško Knežević had the opportunity of buying the bonds on the market for 35 cents over the period of one year, and to be recognised at the time of the transaction the nominal value of the bonds, or one euro per bond, by the state.

The data held by the Central Depositary Agency show that the affiliated companies of Duško Knežević were intensively buying restitution bonds in the stock market; in early 2008, these companies held over 9 million bonds, only to end the year with over 16.5 million bonds.

The purchase continued in 2009, and by the end of that year these companies managed to obtain over 24 million bonds. The data show that in January 2010 the companies of this group held over 25 million bonds, only to be reduced down to 7.8 million in February, which means that meanwhile the transaction took place including over 17,5 million bonds. Apparently this was the moment when the consortium paid to the Ministry of Finance the purchase price for the military complex in Meljine.

FINANSIJA					
3	Fond zajedničkog ulaganja "ATLAS MONT"	STANKA DRAGOJEVIĆA 4	PODGORICA	8,082,901	10.9761%
4	NM - Zbirni Kastodi račun 1	Bulevar Stanka Dragojevića	PODGORICA	7,530,000	10.2252%
5	INVEST BANKA MONTENEGRO	Stanka Dragojevića 4	PODGORICA	4,332,401	5.8831%
6	COSMOS LTD	ICAZA, GONZALEZ- RUIZ, ALEMAN	INOSTRANSTVO	2,116,528	2.8741%
7	ATLAS LIFE	HERCEGOVAČKA 50	PODGORICA	987,701	1.3412%
8	ATLASMONT BANKA AD	STANKA DRAGOJEVIĆA 4	Podgorica	834,934	1.1338%
9	AD JADRANSKI SAJAM	TRG SLOBODE 5	Budva	830,000	1.1271%
10	ŠOFRANAC PERSIDA	MIKE ALASA 36	BEOGRAD	501,676	0.6812%

*An excerpt from the CDA data on 18 January 2010  
when the companies affiliated to Knežević held 24.7 million bonds*

<sup>6</sup> Source: daily Vijesti (articles from May and June 2007)



Such a conclusion is further substantiated by the information that between January and February the bonds held by the Ministry of Finance increased from 18.7 to 36.2 million bonds. Hence, the consortium was more than half a year in default with the payment of the purchase price.

Naziv emitenta: REPUBLIKA CRNA GORA				
Simbol HOV: FO02		Ukupan broj akcija: 73,781,149		
R.Br.	Naziv	Adresa	Grad	Broj akcija %
1	VLADA CRNE GORE-MINISTARSTVO FINANSIJA	Ul. Stanka Dragojevića br.2	Podgorica	36,277,737 49.1694%
2	FOND ZA OBEŠTEČENJE	PODGORICA	PODGORICA	19,108,812 25.8993%
3	NM - Zbirni Kastodi račun 1	Bulevar Stanka Dragojevića 46	PODGORICA	7,530,000 10.2059%
4	ŠOFRANAC PERSIDA	MIKE ALASA 36	BEOGRAD	501,676 0.6800%
5	BAKOČEVIĆ PAŠKO	D.Štoj	ULCINJ	500,000 0.6777%
6	"FIN INVEST" DOO	Stanka Dragojevića 4	Podgorica	347,450 0.4709%
7	PREMOVIC VELIBOR	B.JANKOVIĆA	NIKŠIĆ	332,000 0.4500%

*An excerpt from the CDA data on 01 February 2010 showing that the affiliated companies do not hold any more most of previously held bonds*

Hence, the whole deal yielded greatest gains for Duško Knežević, since basically the complex in Meljine was paid less than 10 million euros in total. Moreover, the consortium was in default of payment for over half a year, since the payment deadline expired in June 2009.

It is also not known whether the consortium paid the 30% of the purchase price in bonds upon the agreement signature, and it is highly indicative that by June 2010 the amount of 7.5 million bonds, which is actually one third of the total purchase price for the military complex in Meljine, was paid from the custody accounts of affiliated entities. Invoking the provisions of the FAI Law, MANS requested from the Ministry of Finance the data of this transaction, but have not received anything to this date.

Apart from the investor being privileged in paying the purchase price, the Government further favoured them by stipulated the "adoption of the location study or the detailed urban plan acceptable for the buyer in its form and essence" as a precondition for the agreement closure. Thus, the investor was guaranteed to have the plan of their liking adopted, disregarding fully the interests of the citizens of Herceg Novi.

(b) usvajanje Studije lokacije ili Detaljnog prostornog plana koji se odnosi na celokupnu Lokaciju u obliku i po suštini prihvatljivog za KUPCA, na način koji će dozvoliti pripremu Projekta u skladu sa Investicionim planom koji je Prilog broj 2 ovog Ugovora;

*Preconditions for closure (the buyer was promised the adoption of a plan to suit their wishes), Article 12 to the Agreement*

Already in 2007, at the time of negotiations between the Government and the consortium towards the conclusion of the agreement, it was published that Knežević and his partners had megalomaniac construction appetites. They intended, namely, to build a large hotel and a rehabilitation centre, to be built in the form of two towers with as many as 18 floors, which would require radical changes to the urban plans. This points to a conclusion that the real agenda of the investor was not to develop health tourism, but hotel facilities.



To what extent the investor's interests influenced the plan is best illustrated by the fact that the earlier municipal Spatial Plan did not envisage this zone for tourism purpose, but for healthcare only. The new Spatial Plan, adopted in February 2009, changed that and allowed tourism facilities, 300 hotel beds and 600 apartment beds.

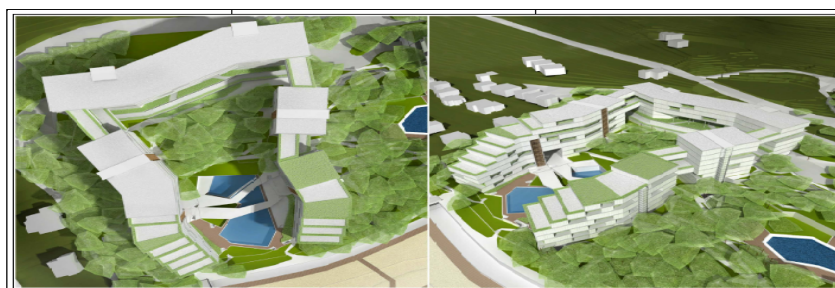
Notwithstanding the huge public opposition, the local council adopted the Urban Plan Meljine in December 2009. The investor was allowed to build as much as 90,000 sqm of gross buildable area, out of which 39,000 sqm for apartments, 24,000 sqm for hotel facilities, and 27,000 sqm for a seven-storey hospital complex.



*Figure 16d - Hotel 3D model*

The guests of the future hotels will have available only 37 sqm of free and green areas, twice less than the stipulated share for a four-star hotel. The absence of open and green areas is even more noticeable at the level of the whole complex since it provides a mere 30 sqm of green areas per user. Apart from not being enough for the hotel guests, it is absolutely inhuman for patients (subsequently adopted domestic legislation requires green areas to constitute as much as 70% of the hospital complexes).

Interestingly, at the time the Mayor of Herceg Novi, Dejan Mandić stated that “the municipality had to accept what was the economic minimum for the investor and the height below which it would not be profitable to develop, because otherwise the hospital would be closed down and no one would reopen it again. The acceptance of this project is a sacrifice for the town “.



*Figure 17d - Apartments 3D model*

We are unaware whether the Government ever assessed the value of the site at the time of the public call for tenders for the sale of the military complex in Meljine. However, in late 2009 the consortium set up a special purpose vehicle "Meljine kompleks" doo and in early 2010 hired experts to assess the value of the site. According to such reports, the total estimated value was 56.1 million euro, with the medical equipment value being 3.3 million, and the rest the estimated value of land and buildings. Based on such reports, a decision was made to increase non-monetary capital to 56.1 million euros.

Član 1  
Povećava se kapital Društva sa ograničenom odgovornošću „Meljine Kompleks“ Herceg Novi unosom nenovčanog uloga osnivača, koji se sastoji od zemljišta, objekata i opreme, čija ukupna procijenjena vrijednost iznosi na dan 01.03.2010. godine, 56.122.038,45 € (slovima: pedesetšestmiliona stotvadesetdvije hiljadet i 45/100 eura)  
Procjena vrijednosti opreme je izvršena od strane ovlaštenog procjenjivača za opremu, Agencije Conecting Podgorica i prema Izvještaju procjenjivača, na dan 25.02.2010. godine, iznosi ukupno 3.346.980,00 €, dok je procjena vrijednosti nepokretnosti, zemljišta i objekata izvršena od strane ovlaštenog procjenjivača za tehničku oblast Milana Mirkovića, dipl. ing.-gradj. i prema Izvještaju od 24.02.2010. godine, iznosi ukupno 52.775.058,45 €.

*An excerpt from the Decision to increase the non-monetary capital of "Meljine kompleks"*

### 3.2. "Strategic" investors and the rule of law

The investment boom that lasted until several years back brought about a wave of capital that washed over particularly a relatively developed and urbanised coastal region of Montenegro and posed huge challenges for abiding by the legislation and upholding the rule of law in the fields of urban planning and construction.

Poor administrative capacities of responsible institutions at the local and the state levels alike, but primarily the deeply rooted corruption and in certain cases the total lack of transparency in decision-making, attracted alongside the needed capital, also those investors who are not much "accustomed" to full observance of laws and construction rules.

It has all left a lasting impact on physical planning in Montenegro, particularly the coastal zone, which holds a particular appeal for the investors. Over the previous period the government offered whole complexes for sale, but also the valuable non-urbanised land at the most unique scenic locations.

The agreements concluded with investors, regarding either the sale or lease of state assets, were supposed to bring abundant flow of investments and generate new employment, and investors were described as drivers of local economy. Years afterwards, we have many an example, particularly at the coast, of ghost developments, either never completed or even never commenced.

The state property sale or lease agreements were frequently breached resulting in the situation already explained. There are rare examples of termination of agreements or collection of penalties on the account of violations, while the practice of concluding annexes to original agreements to extend the deadlines, to reduce the lease amounts is already a well-established, and the government seems disinterested in forcing the "strategic" investors into observance of rules and procedures.

Even the selection of investors on not a rare occasion was subject to the abuse of the tendering process, as described in detail in the "Valdanos" case presented below. The example of sale of state property to a "strategic investor" hidden behind off-shore destinations is presented in the "Skočidevojka" case.

An illustrative example how far disregard for contractual obligations can go with tacit acceptance of state authorities is the "Sveti Stefan" case also presented below.

### Case Study 3: Valdanos

The 3.5 million square metre large Valdanos cove, with an olive grove with close to 18,000 trees, is one of the most beautiful pearls on the Montenegrin coast, and a site with undisputable tourism potentials. The olive trees are over 350 years old, some even 500, or even 1000, which is why in 1968 this area was declared a monument of nature, while it enjoys special protection status according to the Law on Olive Growing.

In late November 2010, the Government of Montenegro adopted the State Location Study for Valdanos. The study drafter was the National Institute for Urban Planning and Design, in majority ownership of Aco Đukanović, the brother of the then Prime Minister, Milo Đukanović.

The drafters enabled the future developer to construct 100 villas in total, 300 square meters of gross built-up area (GBA) each, with a 45 square metre terrace and a swimming pool. There is also envisaged development of three hotels with close to 700 beds, and allowable GBA of 66,782 square metres. Together with the villas, 1,400 beds in total are allowed.

Ukupni pokazatelji planiranog stanja za zahvat Studije lokacije	
▪ Površina zahvata.....	352 ha
▪ Površina urbanističkih parcela.....	371.162m <sup>2</sup>
▪ Bruto građevinska površina objekata.....	111.284 m <sup>2</sup>
▪ Ukupan broj ležajeva.....	1.400
▪ Indeks zauzetosti u zonama za izgradnju.....	0.13
▪ Indeks izgrađenosti u zonama za izgradnju.....	0.30
▪ Indeks zauzetosti na nivou zahvata plana.....	0.014
▪ Indeks izgrađenosti na nivou zahvata plana.....	0.032

*An excerpt from the State Location Study for Valdanos showing intended development*

The experience to date shows that mixed tourism and residential developments most often ended by developers promising huge investments in tourism before concluding the deal, only to, after entering into contract with the Government, build and sell first the residential units, and then move to another location, without any intention to build tourism amenities.

In the given case, the decision to build as many as 100 villas for the property market in the Valdanos cove indicates that the Government still encourages the construction of residential units for the market notwithstanding the very limited space for tourism development.

In addition to residential units for the market, the State Location Study envisages also that the development would have significant environmental impact. The decision to develop the State Location Study was made before the adoption of the Law on Strategic Environmental Assessment, and thus the Government was not obligated to carry out impact assessment and conduct public discussions.

Notwithstanding the absence of legal requirements, the Government decision to implement a project with clear environmental impact without clearly stipulating the measures to prevent nature degradation is disconcerting.

The type of development involved here is best illustrated by the fact that the future lease-holder for Valdanos is allowed to “transplant” centennial olive trees in cases where needed for the construction of villas. Thus, no care was taken of this area being designated as a monument of nature and a special protected area.

#### Pravila za presađnju

U svim zonama u kojima se planira izgradnja turističkih sadržaja, postoji značajan broj starih stabala masline. Obzirom da masline imaju veoma značajnu ulogu u valorizaciji terena, neophodno je obezbijediti njihovo izmještanje (presađivanje) u slučajevima gdje je to zbog izgradnje neophodno. Ovakva (stara) stabla masline mogu se iskoristiti za uređenje parkovskih i drugih zelenih površina unutar turističkog kompleksa, ili izmjestiti u dio zasada (Zona F), te biti korišćena kao rodna stabla.

Za ovaj način presađnje, odnosno očuvanja stabala, potrebne su veće mašine za obradu terena (buldozer, kašikar). Nakon redukcije vegetativne mase krošnje, rezidbom,

*An excerpt from the State Location Study for Valdanos referring to “transplanting” of olive trees*

The drafters have also envisaged the reclamation of the natural beach in Valdanos by replenishment. Thus, the current 10m wide beach will be extended to the maximum of 60m. The State Location Study states that in majority of cases the reclamation is done by dredging the material from the sea bottom. Although the drafters state that such dredging of the sand and pebbles from the sea bottom has never been done in Montenegro, they do not envisage the method for this operation nor measure the negative impact it would have on the natural environment in the Valdanos area.

Na osnovu prethodnih analiza mogle bi se sumirati preporuke u pogledu uređenja obale i plaže u uvali Valdanos :

- Imajući u vidu veoma ambiciozne planove za izgradnju turističkog kompleksa u uvali Valdanos, sadašnja površina prirodne plaže je sasvim sigurno nedovoljna. Posebno što se radi o ekskluzivnom turističkom lokalitetu. Za povećanje širine plaže trebalo bi primijeniti metodu prihranjivanja plaža. Širina buduće plaže u uvali Valdanos trebalo bi da bude između 50 i 60 metara. Postojeću betonsku stazu i sve betonske objekte na plaži trebalo bi obavezno ukloniti.

*An excerpt from the State Location Study for Valdanos referring to beach reclamation*

The State Location Study deals also with the economic benefits of tapping the Valdanos cove resources for tourism. Thus, they state that the government may expect from the project a one-off revenue amounting to 21,712,000 EUR as per the collection of the buildable land fee, and regular annual revenues of 2,240,266 EUR as per Corporate Tax, VAT, contributions to salaries of the employees, and Property Tax.

For almost two years now several Ulcinj-based NGOs and independent intellectuals have been pointing to the problems related to the Valdanos tender, both environmental, and the ones related to unresolved property issues. More specifically, there are pending cases before the Administrative Court and the Supreme Court in which former land owners ask for restitutions of their property. Some cases are even pending before the European Court of Human Rights in Strasbourg. In May 2007 the Local Council of Ulcinj adopted unanimously the Decision on the Restitution of Land to Former Owners and De-Expropriation, but it never entered into force.



In late 2008 the Privatisation Council announced an international tender for long-term lease of Valdanos. According to the tender requirements, Valdanos is leased for 30 years, with the possibility to extend the lease to 90 years for investments exceeding 200 million.

The Privatisation Council extended the deadline for bids twice, with two companies applying in April 2009 - UK-based Cubus Lux, and a Russian-Montenegrin consortium Mos City Group. Five days before the closure of tenders, the Tender Commission dismissed the Mos City Group bid as irregular given that the developer failed to provide bank guarantees in time. At the same time, the Tender Commission invited Cubus Lux for negotiations.

After over a year, on 24 November 2010 the Council for Privatisation and Capital Projects approved the Draft Agreement on Long-Term Lease of Valdanos with Cubus Lux for the period of 30 years, with the obligation to develop an exclusive 4+ and 5 star resort, with the total investment value of 222,517,379 EUR. Only a day later, on 25 November, the Government adopted the State Location Study for Valdanos and the Decision on the Long-Term Lease of Valdanos authorising Vujica Lazović, Deputy Prime Minister, to sign the Lease Agreement.

Vujica Lazović was also the chair of the Privatisation Council, and the chair of the Tender Commission in charge of the tender procedure which passed the decision to award the contract to the UK company Cubus Lux. Incidentally, the Government established the Valdanos Tender Commission twice, in 2007 and 2009, respectively, both times chaired by Vujica Lazović.

The Commission members among others included now the former Minister of Tourism, Predrag Nenezić, Boro Vučinić, Minister of Defence, Vladimir Kavarić, Minister of Economy, Branko Vujović, former Minister of Economy, Gzim Hajdinaga, Mayor of Ulcinj, Mićo Orlandić, director of the Real Estate Agency, Rajko Barović, director of the Public Enterprise for Coastal Zone Management, and Damir Šehović, Member of Parliament.

The Call for Bids for leasing Valdanos stipulates that a bidder must **cumulatively** meet the requirements under A or B as eligibility criteria for participation to the procedure.

**B.**

- Ponudlač mora imati vrijednost kapitala pod upravljanjem od najmanje 100 miliona eura.
- Ponudlač mora dokazati da je najmanje u tri poslovne godine u posljednjih 5 kalendarskih godina ostvario pozitivan finansijski rezultat
- Ponudlač morad okazati da je u toku posljednje poslovne godine ostvario ukupan promet od najmanje 200 miliona eura
- Ponudlač mora imati Pismo o namjerama ili sklopljen Ugovor o upravljanju sa renomiranom kompanijom koja upravlja sa najmanje dva hotelska resorta međunarodnih standarda od najmanje četiri plus zvjezdice.

Kvalifikacioni uslovi B. moraju biti ispunjeni **kumulativno**. Ispunjenost Kvalifikacionih uslova ocjenjivaće se nakon prijema i otvaranja paketa sa ponudama.

*An excerpts from the Call for Bids for long-term lease of Valdanos*

The tender requirement under B implied that Cubus Lux had to have capital under its control of at least 100 million EUR, that it had to prove positive business performance for previous three business years over the last five calendar years, as well as to have the total turnover of at least 200 million EUR over the last business year.

According to British laws, Cubus Lux is registered as a PLC (Public Limited Company) which, among other things, implies its requirement to publicise financial statements. Financial statements are available at the company website, but also the foreign financial portals monitoring the operation of companies.

Cubus Lux had to comply with the tender requirement of three years with positive performance over the last five. Given the date of the call for bids, the reference years for the Tender Commission were 2004, 2005, 2006, 2007 and 2008.

According to the data from financial statements, Cubus Lux ended the business year 2004 with the loss of £453,000. The subsequent year, 2005 also ended with a loss of £497,000.

In 2006, Cubus Lux adopted the International Standards for Financial Reporting, which, according to EU directives, imply different reporting period, with the 15 month as the accounting period. Thus, the 2006 financial statement was done for the period of 15 months, ending with 31 March 2007, as stated in the statement proper. Over this period, Cubus Lux again operated with a loss, this time amounting to £130,000.

The 2007 financial statement, done in line with the new system for the period up to 31 March 2008 show positive performance with the profit of £4.8 million. It is at the same time the only year over the 2004-2010 period in which Cubus Lux had a positive performance.

The subsequent statement shows that Cubus Lux again performed with a loss of £2.1 million.

	Note	2005 £'000	2004 £'000
TURNOVER	1,2	571	484
Cost of sales		(70)	(58)
<b>GROSS PROFIT</b>		<b>501</b>	<b>426</b>
Administrative expenses		(981)	(886)
<b>OPERATING LOSS</b>	3	<b>(480)</b>	<b>(460)</b>
Interest payable and similar charges	6	(18)	(7)
Interest receivable and other income	7	1	14
<b>LOSS ON ORDINARY ACTIVITIES BEFORE TAXATION</b>		<b>(497)</b>	<b>(453)</b>
Tax on loss on ordinary activities	8	-	-
<b>RETAINED LOSS</b>		<b>(497)</b>	<b>(453)</b>
<b>LOSS PER SHARE</b>			
Basic and diluted	21	(2.15p)	(2.41p)

All activities arose from continuing activities.

CUBUS LUX PLC			
CONSOLIDATED PROFIT AND LOSS ACCOUNT			
FOR THE 15 MONTHS ENDED 31 MARCH 2007			
	Notes	Period ended 31 March 2007 £'000	Year ended 31 December 2005 £'000
TURNOVER	1,2	1,017	571
Cost of sales	3	(150)	(70)
<b>GROSS PROFIT</b>		<b>867</b>	<b>501</b>
Administrative expenses		(1,957)	(981)
Other income	8	1,451	-
<b>OPERATING PROFIT/(LOSS)</b>	4	<b>361</b>	<b>(480)</b>
Finance expenditure	5	(201)	(17)
<b>PROFIT/(LOSS) ON ORDINARY ACTIVITIES BEFORE TAXATION</b>		<b>160</b>	<b>(497)</b>
Tax on loss on ordinary activities	6	(290)	-
<b>LOSS FOR THE PERIOD</b>		<b>(130)</b>	<b>(497)</b>

*Excerpts from financial statements of Cubus Lux*

The financial statements show that the overall turnover of Cubus Lux in 2008 was far below the tender requirements, and amounted to £3.1 million for the given year.

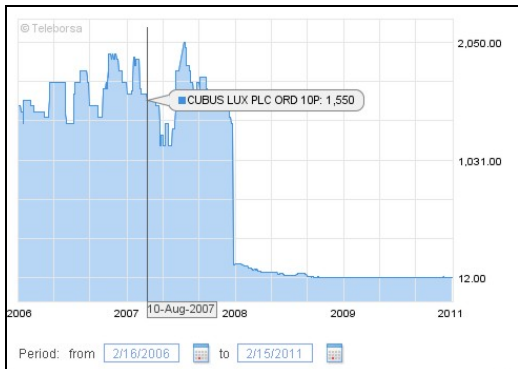
The statements show that the company disposes of assets of the total value of some 50 million British pounds, instead of at least 100 million euro as stipulated in the tender requirements.

<b>ASSETS</b>		
<b>NON-CURRENT ASSETS</b>		
Intangible assets	8	35,902
Goodwill	8	940
Property, plant and equipment	9	4,702
		<b>41,544</b>
<b>CURRENT ASSETS</b>		
Inventories	11	3,172
Trade and other receivables	12	2,384
Cash at bank	13	2,372
		<b>7,928</b>
<b>TOTAL ASSETS</b>		<b>49,472</b>

*Excerpts from financial statements of Cubus Lux*

The only tender requirement met by Cubus Lux is the Letter of Intent signed with the Spanish tourism company *Sol Melia*. Hence, all the above indicates that Cubus Lux has not met the tender requirements so that the Government could have concluded Lease Agreement for Valdanos with them.

MANS indicated to the Council for Privatisation and Capital Projects the fact that Cubus Lux continued to perform with losses even after the tender conclusion, and that the shares of this company listed at the Frankfurt and London stock exchanges continue to drop.



In addition, in its financial statements, Cubus Lux admits not having enough money needed for intended investments and expresses hopes to receive support for the project from local banks in Montenegro.



#### Valdanos

After having won the tender to develop the Valdanos land, near Ulcinj in Montenegro, we have started negotiations of the purchase contract with the Montenegro Government. The next step will be to complete a detailed business plan before the project commences. We will need to secure financing to fund the development project and hope to be able to obtain this from local banks in Montenegro.

#### IAS 36 Impairment of Assets Review

Typically, for a project-rich company, which has obtained some projects through acquisition, the Company, having

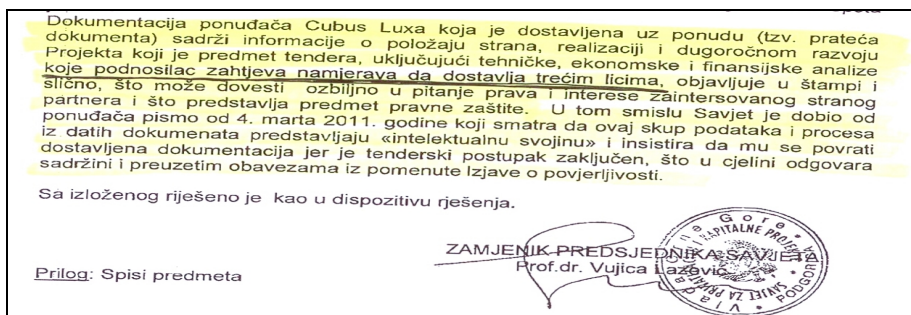
#### Excerpts from a financial statement of Cubus Lux

Invoking the Free Access to Information Law, MANS requested from the Privatisation Council to inspect full documents reviewed by the Valdanos Tender Commission, including the decision of granting lease to Cubus Lux, the Tender Report given by the Commission, the Investment Plan, and Bank Guarantees, as well as the evidence of positive performance of Cubus Lux and the availability of capital, as eligibility criteria. The request was sent in early February 2011, but the Privatisation Council ignored it why in early March, MANS lodged a complaint with the Administrative Court.

Finally, on 15 March the Council replied to MANS's request and prohibited access to information concerning the evidence that Cubus Lux, as the first-ranking and the winning bidder applying to the tender for tourism development of Valdanos, met the tender requirements, as well as the information on the Investment Plan and the bank guarantees.

The response states that "the documents accompanying the Cubus Lux bid contain information on the standing of parties, the implementation and long-term project development subject of the tender, including the technical, economic and financial due diligence **which the applicant intends to make available to third parties, publicise etc,** that may seriously jeopardise the rights and interests of the foreign partner and which is subject to legal protection".

According to both the Montenegrin and British applicable law, financial statements of companies are publicly available documents which anyone can examine, and thus it is beyond comprehension how the Council could have prohibited access to the part of requested information referring to the evidence of eligibility of Cubus Lux for the Valdanos tender.



Response provided by Council for Privatisation

Based on the evidence gathered, in mid February MANS submitted a criminal report with the Supreme State Prosecutor against the Deputy Prime Minister Vujica Lazović because of suspicion of the abuse of office and negligent performance of official capacity in the tender procedure for long/term lease, thus enabling Cubus Lux to be chosen as the best bidder although it did not meet the eligibility criteria. At the time of the decision on Valdanos, Vujica Lazović was the chair of the Council for Privatisation and Capital Projects, and the chair to the Tender Commission for tourism development of Valdanos.

Along with the report, we submitted to the Supreme State Prosecutor all financial statements of Cubus Lux proving grave violation of the tender procedure, and that this company did not even meet the eligibility criteria, let alone be the best bidder.

We also submitted the financial reports to the current Prime Minister and the chair of the Council for Privatisation and Capital Projects, Igor Lukšić, and the Speaker of the Parliament, Ranko Krivokapić, and asked them to respond within their competences. On 11 February the Government disclosed the Draft Agreement with Cubus Lux which, however, does not contain the annexes with the Investment Plan and Bank Guarantees.

MANS furnished the Parliamentary Commission for Monitoring and Oversight over the Privatisation Process the initiative with the proposal for the Committee to stage control hearings for Lazović and Lukšić, as well as to request from the Privatisation Council the full tender dossier and post it on the Parliament's website. The Commission announced the debate on Valdanos, but it has not been held yet.

Finally, MANS requested from the Council for Privatisation and Capital Projects to annul the tender and the decision of granting long-term lease of Valdanos to Cubus Lux at its next session. Instead, at its next session, the Government, without further investigation, reconfirmed that the tender was conducted transparently and lawfully.

After the publication of all evidence and the submission of criminal report, Vujica Lazović reiterated publicly on several occasions that the Valdanos tender procedure was conducted transparently and lawfully, but did not present any evidence to refute the allegations made by MANS.

MANS published the excerpts from financial statements in daily papers, which caused strong reaction of the members of the Government, Vujica Lazović in particular, who indirectly accused MANS of scaring off investors and creating a hostile environment aimed at deterring foreign investors from investing in Montenegro.

**FINANSIJSKI IZVJEŠTAJI CUBUS LUX-a**

Godina	2003	2004	2005	2006	2007
Gubitak od	265.000 €	453.000 €	497.000 €	130.000 €	4,871 mil €
Profit od					

**Uslovi tendera za Valdanos:**

- vrijednost kapitala najmanje **100** mil. eura
- promet najmanje **200** mil eura
- najmanje **3** godine poslova pozitivno

Kompletni Finansijski izvještaji kompanije Cubus Lux su dostupni na sajtu MANS-a: [www.mans.co.me](http://www.mans.co.me)

**Kome više vjerujete...**

**Svojim očima ili VUJICI LAZOVIĆU?**

Gradimo budućnost - projektat podržava transparentno i odgovorno planiranje i uvođenje prostora. Ovaj projektat je finansirao od strane Evropske Unije, preko Delegacije EU u Crnoj Gori i implementirao ga MANS za afirmaciju nevladinog sektora - MANS.

According to Lazović, the particularly problematic aspect is that Cubus Lux is an EU-based company, and thus he believes that it may send a bad message to other investors from EU wishing to invest in Montenegro.

The Prime Minister himself, Igor Lukšić, speaking of the Valdanos tender said that “the general sentiment goes in the direction that no one suits us, either from Russia, or EU”.

However, Cubus Lux is a UK company only by registration, and most of its investments are targeting the Croatian coast. This company manages two gambling houses in tourism resorts in Pula and Selce, while in the vicinity of Zadar it manages a 200 berth marina on the island of Ugljan. Its Executive Manager, Gerhard Huber is at the same time the largest shareholder (16.5 % of the company), followed by Christian Kaiser (10.9 %), and one of the prominent shareholders include a Croatian citizen Milan Kotur (5.4 %).

On 24 February MANS sent an open letter to the members of the international community and expressed special concerns about the Government persistence, particularly some of its high-ranking officials, to lead the negotiations with Cubus Lux to its closure at all costs despite blatant evidence indicative of the deal's illegality. The letter also drew attention to the unacceptable attitude of the Government towards the nongovernmental sector, reflected in the attempt of the Government to present the NGO actions as being directed against the state and damaging to the investment environment in Montenegro.

Cubus Lux representatives who arrived to Podgorica in the meantime said they felt undesirable in Montenegro and asked the British embassy and the Delegation of the European Union to Podgorica for help and requested of them, as donors, to “direct the actions of MANS to other more pressing problems in the country”, accusing MANS of favouring Russian and Chinese investors.

Under the public pressure, after almost two years of negotiations, the Privatisation Council gave to Cubus Lux the ten day deadline, until the end of February 2011 to provide guarantees for Valdanos investment.

Before the deadline expiry, the Government announced that Cubus Lux asked the Agreement to contain the so-called “Swiss arbitration” clause because it was unacceptable for the investor to have the disputes handled by Montenegrin courts.

Finally, on 28 February 2011, the Tender Commission for Valdanos decided to annul the tender, stating as the official reason that Cubus Lux failed to secure the requested guarantees. The Privatisation Council announced the new call for tenders is due by the end of April 2011.

The representatives of Cubus Lux gave conflicting statements, one saying that they will reapply for the tender since they have already invested too much money in the bid preparation, while their representative, Milan Kotur said that the company would not take part in the new tender procedure.

MANS continued with the appeals on the Supreme State Prosecutor to consider the criminal report submitted as soon as possible in order to establish liability for violations in the Valdanos case.

#### Case study 4: Skočidevojka

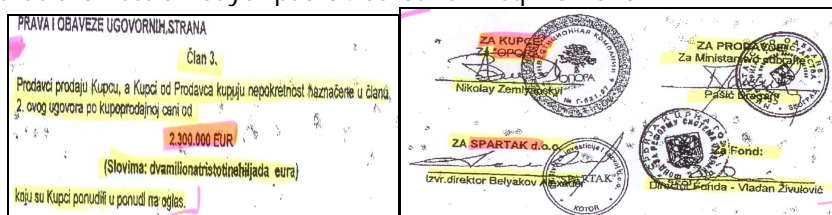
This case study shows the damage to the public interest measured in millions, since the state sold a plot of land in Reževići, the Municipality of Budva for the total price of 2.3 million euros only for the new owners to resell it for 42 millions. In addition, the plan for the location was adopted subsequently enabling the current owner from Egypt to develop a megalomaniacal project on the cliff by the sea, which will bring profits measured in millions.

The development has not started to this date, while the volume of damage to the public interest is illustrated by the table below containing comparative data on dates of sale and the rates achieved.

DATE OF SALE	TOTAL PRICE	BUYER	PRICE/sqm
6 May 2005	2,300,000	SPARTAK/RUSI	34 euros
31 August 2007	14,242,030	CALDERO TRADING LIMITED	215 euros
6 September 2007	41,732,460	MONTE MENA	630 euros

The military complex “Skočidevojka” was sold in May 2005 for the total amount of 2.3 million euros, at the time when Montenegro still made part of the State Union with Serbia. The 66,242 sqm complex and the 5 buildings of 919 sqm in area were sold by the then Ministry of Defence together with the Fund for the Reform of the Defence System of the State Union of Serbia and Montenegro, but with the approval of the Government of Montenegro and the duty to transfer the money to the Ministry of Finance in Podgorica.

The sale agreement was signed on 06 May 2005 with the Russian investment company “Opora”, as represented by the director Nikolay Zemlyanskyi, and the company “Spartak” doo from Kotor, whose representative was the executive director Alexander Belyakov. Their bid was selected as the most advantageous one received in the tender, previously invited by the Fund for the Reform of the Defence System, as approved by the Government in Podgorica. Dividing the total price by the land area, it becomes evident that the Russian buyer paid 34 euros for 1 sqm of land.

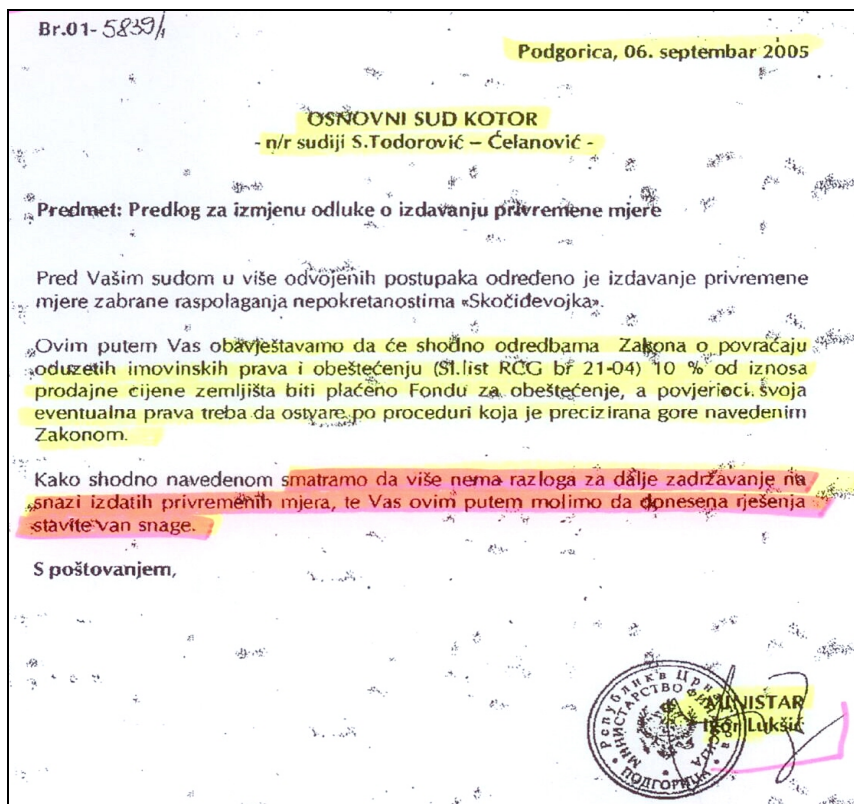


*The sale price and the signatories to the Sale Agreement for “Skočidevojka”*

At the time of sale, the land was involved in a restitution dispute, instigated by several prior owners. On this count, the Basic Court Kotor imposed an injunction regarding the property prohibiting disposal over land, but it never prevented the officials from closing this deal.

Interestingly, in September 2005, the then Minister of Finance, and today's Prime Minister, Igor Lukšić, sent to the Basic Court Kotor a proposal to modify the injunction. Namely, Lukšić asked the judges to put the injunction out of force explaining that 10% of the sale price will go to the Restitution Fund, from which the prior owners may collect their claims.

This move by Lukšić is quite telling, since it meant direct interference with the competences of the judicial power, supposedly independent from the executive.



*A letter sent by Igor Lukšić to the Basic Court Kotor*

The “Spartak” doo company, with its registered seat in Kotor, was incorporated on 27 April 2005, or some ten days or so before the sale agreement for the military complex “Skočidevojka” was signed. The founders of the company are Nikolay Zemlyanskyi, with the founding share of 90 percent (who signed the agreement on behalf of “Opora”), and Alexander Belyakov, with 10 percent of the founding capital.

The founding capital of “Spartak” was 10,000 euro, and the company was registered for development of property-related projects. In late 2005, the founders of “Spartak” changed the registered seat and moved it to Herceg Novi.



Član 5. IZNOS OSNOVNOG KAPITALA I VISINA ULOGA	
05.01.	Osnivači na ime osnivanja Društva unose početni kapital potreban za početak rada Društva u visini od 10.000 EUR-a i
a	ZEMLYANSKYI NIKOLAY uplaćuje i upisuje 90.00 % ukupnog kapitala u iznosu od 9.000,00 EUR
u	BELYAKOV ALEXANDER uplaćuje i upisuje 10% ukupnog kapitala u iznosu od 1000,00 EUR
Cjelokupan iznos kapitala biće uplaćen u roku od godinu dana od dana registracije.	

*The amount of capital of the company that bought “Skočiđevojka”*

Two years later, or in June 2007, alongside Zemlyanski and Belyakov another founder appears in “Spartak”, the “Bleze corporation”, registered at an offshore destination, the Seychelles. According to the data held by the Central Register of the Commercial Court of Montenegro, this company was registered on 16 March 2005 in Victoria, the Seychelles, with the authorised capital of 5,000 US dollars, and its directors were Nikolay Zemlyanskyi, and another Zemlyanskiy, Sergey this time.

Hence, this company was incorporated at an offshore destination two months before having signed the sale agreement for the military complex “Skočiđevojka”.

**ODLUKA POTPISNIKA UGOVORA O OSNIVANJU  
U PISMENOJ FORMI**

**BLEZE CORPORATION**  
Kompanija br: 019544

Niže potpisani kao potpisnik Ugovora o osnivanju gore navedene kompanije izjavljuju sljedeće:

- Donosi se odluka da se sjedeća lica imenuju i ona se ovim imenuju za direktore kompanije:  
**Nikolay Zemlyansky**  
**Sergey Zemlyansky**
- Donosi se odluka da se direktori ovlaste i oni se ovim ovlašćuju da izdaju potvrde o posjedovanju akcija koje glase na donosioca ili koje glase na ime.

Kompanija broj 019544

**UGOVOR O OSNIVANJU**

- Naziv kompanije je **Bleze korporacija**.
- Registrovano sjedište kompanije se nalazi na adresi 306 Victoria House, Victoria, Mahe, Seychelles.
- Registrovani zastupnik kompanije je Intershore Consult (Proprietary) Limited, adresa: 306 Victoria House, Victoria, Mahe, Seychelles.

*Directors and the Memorandum of Association “Bleze Corporation”*

By the entry of the “Bleze corporation” the shares in the founding capital of “Spartak” changed, although in total it still amounted to 10,000 euros. Now, “Bleze corporation” has a 99% share, Nikolay Zemlyanskyi now has 0.9 percent, and Alexander Belyakov 0.1 percent. The Share Transfer Agreement stipulates that “Bleze corporation” is obliged to convert the 2,350,000 euro loan from 2005 to the company’s equity, and this amount actually matches the purchase price for “Skočiđevojka”.

**Član 2.**

Ugovarači ZEMLYANSKY NIKOLAY i BELIYAKOV ALEKSANDER prenose ,a BLAZE CORPORATION preuzima dio udjela koji oni posjeduju takod da će nakon prenosa udjela odnos u drustvu biti

- ZEMLYANSKYI NIKOLAY sa udjelom od 0,90%
- BELYAKOV ALEXANDER, sa udjhelom od 0,10%
- BLAZE CORPORATION sa udjelom od 99%

**Član 3.**

Prenos predmetnog vrši se bez naknade

BLAZE CORPORATION je dužan da zajam kredit koji je 2005.godine u iznosu od 2.350.000 € pretvori u osnovni kapital društva.

*The purchase price is converted into equity*

The decision to increase the equity of "Spartak" was adopted on 26 July 2007, and thus it was increased to 2,360,000 euros. On the same day, the NLB Montenegro banka issued a certificate confirming that on 26 May 2005 there was a payment to the foreign exchange account of "Spartak" in the amount of 2,350,000 euros from "Bleze corporation", the Seychelles, spent for the purchase of the once military complex "Skočiđevjka".

Hence, it is clear that this remittance was related to the payment of the purchase price for the military complex, but it is unclear why it was paid from an offshore destination. Also, it is not known whether Montenegrin authorities verified the source of money.

**PREDMET: POTVRDA**

Prema evidenciji NLB Montenegrobanke a.d. preduzece "Spartak" d.o.o. ima otvoren devizni račun broj 00-501-0005543.8

Izdaje se potvrda da je dana 26.05.2005. god. na devizni račun gore spomenutog preduzeća pristigao priliv iz inostranstva u iznosu od 2.350.000.00.€ od firme "Bleze Corporation LTD", iz Victoria-Republic of Seishel.

*The money used for purchase of the military complex came from an offshore destination*

A few months later, in August 2007, the Russian owners leave "Spartak" altogether, selling the whole share to a Cyprus-based company "Caldero Trading Limited". On the last day of August, "Bleze corporation" and "Caldero Trading Limited" concluded a share transfer agreement for "Spartak" for the price of 14,242,030 euros, meaning that the land was resold at the price of 215 euros per sqm.

**Član 3.**

Prenos udjela iz člana 2. vrši se po cijeni od 14.242.030,00 Eura, koju će sticalac udjela isplatiti prenosiocu udjela u roku od 15 bankarskih dana od dana zaključenja ovog ugovora. Konstatuje se da je prilikom potpisivanja ovog ugovora prenosilac udjela predao punomoćniku sticaoca udjela instrukcije za plaćanje.

*The military complex now purchased by Caldero Trading Limited for over 14 million euros*

According to the bank statements, this sum, over 14 million euros, was paid out on two occasions - on 21 and on 25 September 2007, in the amounts of 7,000,000, and 7,242,030 euros, respectively.



32A:	Value Date, Currency and Amount Date : 21/09/07 Currency : EUR Amount : 7242030,00
33B:	Currency/Instructed Amount EUR7242030,00
50K:	Ordering Customer /CY56002003850000004114688948 CALDERO TRADING LTD BANK OF CYPRUS LTD IBU 0385 2 1 3 13 3699 LIMASSOL
57A:	Account with Institution - BIC KBRBLV2XXXX TRASTA KOMERCBANKA 9, MIESNIEKU IELA 1050 RIGA LATVIA
59:	Beneficiary Customer /LV16KBRB1111212011001 BLEZE CORPORATION
71A:	Details of Charges OUR -}

32A:	Value Date, Currency and Amount Date : 25/09/07 Currency : EUR Amount : 7000000,00
33B:	Currency/Instructed Amount EUR7000000,00
50K:	Ordering Customer /CY56002003850000004114688948 CALDERO TRADING LTD BANK OF CYPRUS LTD IBU 0385 2 1 3 13 3699 LIMASSOL
57A:	Account with Institution - BIC KBRBLV2XXXX TRASTA KOMERCBANKA 9, MIESNIEKU IELA 1050 RIGA LATVIA
59:	Beneficiary Customer /LV16KBRB1111212011001 BLEZE CORPORATION
71A:	Details of Charges OUR -}

*The bank statements on payments by Caldero Trading Limited*

According to the data from the Cyprus company register, the "Caldero Trading Limited" was incorporated back on 04 August 1995 by the brothers Dragan Bećirović (killed in April 2011) and Zoran Bećirović, mostly known in Montenegro for the controversial privatisation of the "Avala" hotel in u Budva.

Only seven days after having purchased the plot from the Russian owners, "Caldero Trading Limited" resold the land to the "Montenegro Real Estate Investment Company Limited", registered at an offshore destination, the British Virgin Islands.

This time, the new agreement on the transfer of the share in the "Spartak" company was signed on 06 September and with it "Caldero Trading Limited" transferred 100% of ownership for the total price of 41,732,460 euros, with the first instalment of 33,121,000 euro to be paid by 18 September the same year, and the remaining 8,611,460 euros within 90 days from the agreement signature. Hence, with this transaction the price of land at "Skočidevojci" boosted up to 630 euros/sqm.

Član 3.
Prenos udjela iz člana 2. vrši se po cijeni od 41.732.460,00 (četdeset jedan milion sedamsto trideset dve hiljade četrsto šezdeset) Eura, koju će sticalac udjela isplatiti prenosiocu udjela na sledeći način:
1. 33.121.000,00 (trideset tri miliona sto dvadeset jedna hiljada) Eura najkasnije do 18.09.2007. godine, s tim što valuta mora biti 18.09.2007. godine.
2. 8.611.460,00 (osam miliona šesto jedanaest hiljada četrsto šezdeset) Eura u roku od 90 (devedeset) dana od dana potpisivanja ovog ugovora.

*Monte Mena buys the complex at an exorbitant price*

The "Montenegro Real Estate Investment Company Limited" was incorporated at the British Virgin Islands on 31 August 2007, i.e. the same day when "Caldero Trading Limited" bought the land from the Russian owners. The executive director of the company is Mohamed Borhan Rachid, a holder of a Canadian passport and with registered residence on Cairo, Egypt, while the company's legal representative in Montenegro is the lawyer Ana Kolarević, sister of the former Prime Minister of Montenegro, Milo Đukanović.

Naziv privrednog društva: Montenegro Real Estate Investment Company Limited						
Broj privrednog društva: 1428420						
REGISTAR DIREKTORA						
Datum postavljenja	Puno ime (i sva ranija imena ili pseudonimi)	Državljanstvo i br. Lične karte i PTT broj	Adresa stanovanja (ili sjedišta kancelarije)	Zanimanje ili drugo mjesto direktora?	Datum prestanka djelatnosti	Napomene
30. avgust 2007.	Mohamed Borhan Rachid	Kanade	23 El Gabalai Street, 4th Floor, Apartment 8 Yamalek Cairo Egzpt	poslovni čovjek (biznismen)		

*Mohamed Borhan Rachid is the executive director of the company from the British Virgin Islands*

The company's Articles of Association state that it was incorporated for investments in Serbia, Montenegro and other places and it is authorised to issue 601 shares, with one regular share being worth 1 US dollar and 600 preferential shares of 100,000 US dollars.

**Za OSNIVAČA**  
«MONTENEGRO REAL ESTATE INVESTMENT COMPANY LIMITED»  
ADVOKAT-LAWYER  
Ana Kolarević  
po punomoći advokata Ana Kolarević  
Tel/fax: +381 81 205 420  
**OVIM POTVRĐUJEM** da je Ana Kolarević, advokat iz Podgorice u svojstvu punomoćnika osnivača svojeručno potpisala ovaj statut. Identitet imenovane utvrđen je na osnovu *passoša br. 005158594*.

*The legal representative of the company from the British Virgin Islands was Ana Kolarević*

An annex to the Share Transfer Agreement was concluded on 18 December 2007 noting that the "Montenegro Real Estate Investment Company Limited" as a purchaser paid only the first instalment, except the amount of 50,000 euros to be paid by 20 January 2008, rescheduling the term for payment of the second instalment for another 90 days, counting from the Annex signature date.

**Član 3.**

Ovim aneksom prodavac i kupac saglasno produžuju rok za plaćanje drugog dela kupoprodajne cene iz člana 3. stav 1. tačka 2. Glavnog ugovora, te se kupac obavezuje da drugi deo kupoprodajne cene u iznosu od 8.611.460,00 (osam miliona šesto jedanaest hiljada četrsto šezdeset) Eura uplati prodavcu u roku od 90 (devedeset) radnih dana od dana potpisivanja ovog aneksa.

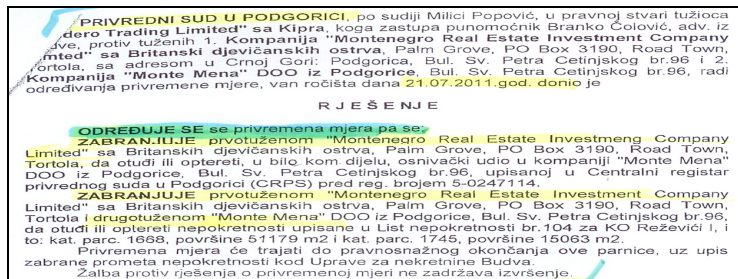
Za ispunjenje obaveze iz stava 1. ovog člana kupac MREIC garantuje prodavcu Caldero Trading Limited imovinom Društva.

*An Annex to the Agreement extending the time for payment of the remaining 8 mil euros*

From the first day of registration, Youssef Omar El Sarraj, holder of a Canadian passport, registered residence Cairo, Egypt, appears as the company's executive director, while in June 2008 the company changes name from "Spartak" to "Monte Mena".

Given that the previous owner, "Caldero Trading Limited", was not paid the remaining sum of 8,611,460 euros, in March 2011 this company launched a proceeding against "Monte Mena" before the Commercial Court asking for an injunction to prohibit disposal of land until the new buyer has settled its dues.

On 21 July 2011 the Commercial Court imposed the injunction banning the disposal and encumbrance of land, which was registered in the Land Register.



*The Commercial Court's ruling prohibiting disposal*

The same land already bears an encumbrance, a 5 million euro mortgage to the benefit of the Hypo Alpe Adria Bank from Podgorica, of 31 January 2008, and a 25,000,000 US dollar lien to the benefit of the future mortgage to the Arab International Bank from Cairo, Egypt, of 13 May 2009.

The decision to draft the urban planning project "Tourism Settlement Skočidevojka" was adopted in December 2007, at the time when the plot was already owned by "Monte Mena", and the plan was eventually adopted in October 2009.

The public discussion report shows that "Monte Mena" had a comment requesting the "Royal Montenegro Grand Resort", which is the name of their development project at "Skočidevojka", to have the residential purpose. The comment stated that the project covered a five-star hotel, a motel, de lux villas, row houses, flats, a shopping centre, a beach, a promenade and an attractive 35-40 berth marina.

The urban plan took account of the megalomaniacal appetites of the investor enabling huge development at the site, favouring the construction of villas and apartments for the market, and not the hotel resorts. At the same time, this increased the value of the site enormously.



*Computer animation of the Monte Mena's project*

The website at which “Monte Mena” resented its “Royal Montenegro Grand Resort” development states that it is carried out in partnership with the Egyptian “Joud Real Estate Fund”, which manages “Osoul Fund Management”.

**The Developer**

Royal Montenegro Grand Resort is being developed with strong partnership between Joud Real Estate Funds and Monte-Mena. Joud Funds have an impressive track record with USD 450 million in capital commitments and highly lucrative investments in a number of projects that span the MENA region and Montenegro. Since 2006, the Joud Funds have invested in over 35 development and construction projects encompassing a land bank of over 14 million/m2. These projects are developed with a number of the region's top developers including Orascom Hotels and Development (OHD), Bayti of Morocco, Sukouk in Jordan, Rooya in Egypt and Monte-Mena in Montenegro. Joud Funds are managed by Osoul Fund Management, which has a vast experience in sourcing, structuring, negotiating and closing deals successfully by capitalizing on solid partnerships with internationally renowned financial, legal and auditing firms including: HSBC, KPMG and Ernst and Young. Osoul Group (OG) was established in 2005 and has grown into one of the most successful residential, leisure and commercial developers in the Middle East and North Africa region.



*From the Royal Montenegro Grand Resort's website*

The search of the Panama register data shows that there are as many as six affiliated companies having the Joud Fund in their names. These are “Joud Fund S.A”, “Joud Fund II S.A.”, “Joud Fund III S.A.”, “Joud Fund IV S.A.”, “Joud Fund V S.A.” and “Joud Fund VI S.A.” all of them featuring as executive directors Mohamed Rachid and Samih Sawiris, the Egyptian millionaire carrying out another development project in Montenegro – a settlement at Luštica, whose value is estimated at more than one billion dollars.

The register of Panama also features two companies having the word Osoul as a part of their names, the “Osoul Fund Management Company S.A.” and the “Osoul Capital S.A.”, again with Mohamed Rachid and Samih Sawiris featuring as directors. The two of them are directors of yet another Panama-based company, containing the words Monte Mena in its name.

This is “Monte Mena Investment Fund S.A”, incorporated on 27 September 2007 (the time when “Monte Mena” took over the “Skočidevojka”) having also Yousef Al Saraj and Majed Shqirat as directors, but also Veselin Vukotic and Vojin Vlahović. For the time being it is still unclear whether these would be the Veselin Vukotić and the Vojin Vlahović, once members of the Montenegro's Privatisation Council, or would these be some other individuals.

Furthermore, the Panama register records the total of 11 companies where Mohamed Rachid features as the director.



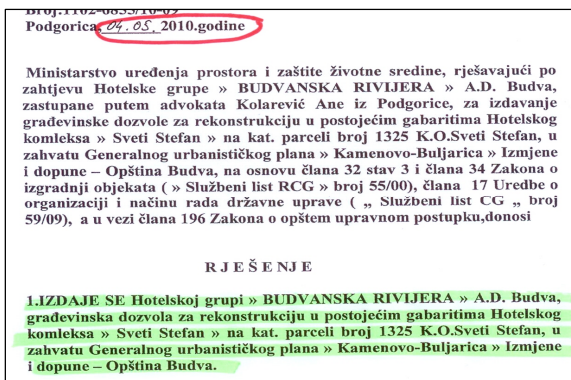
## Case study 5: Sveti Stefan

This study shows how the interests of foreign investors are catered for to the detriment of the public interest and in contravention to domestic laws on the example of illegal construction and lease of the “Sveti Stefan” and “Kraljičina plaža” hotels, owned by the HTP “Budvanska rivijera”, and the “Miločer” hotel, owned by the HTP “Miločer”.

The lease holder for the hotels is the company “Adriatic properties”, owned by the Greek millionaire Victor Restis, and the study shows how for the fifth year in a row the company has been in breach of the Lease Agreement, and how it has illegally restored and constructed at Sveti Stefan.

The study also shows how the Government put up with the illegal construction and the breach of the agreement by the foreign investor, for which to this date the most representative hotels at the coast of Montenegro are still not operating up to their full capacity.

In late 2009, the Greek company “Adriatic properties” carried out construction works



at the Sveti Stefan island. In November 2009 the media published that the Greeks were “intensively reconstructing Sveti Stefan”<sup>7</sup>. This was further reconfirmed in January 2010 when the “Adriatic properties” were giving assurances that the 30 or so villas at Sveti Stefan would be fully operational by the summer season.<sup>8</sup>

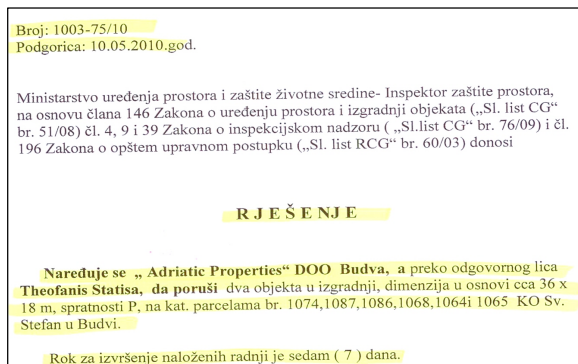
These reconstruction works at the Sveti Stefan, from late 2009 to May 2010, were illegal. Namely, it was not

before the 04 May 2010 that the Ministry for Spatial Planning and Environmental Protection issued to the HTP “Budvanska rivijera”, as the hotel owner, the reconstruction works permit. Hence, for over half a year, the Greeks carried out illegal works at the renowned island.

In addition, in early 2010 the “Adriatic properties” started illegal construction of two buildings within the Miločer park. It was made public in March that two buildings were being built, of 1,600 sqm total area, for the needs of hotel services. The company then stated that the construction of these buildings “commenced after it was established that the prior plan, that we inherited, did not envisage large enough storage and laundry spaces to provide for good-quality service for the Sveti Stefan resort”.

<sup>7</sup> The article from the daily Dan of 23 November 2009.

<sup>8</sup> An article in the daily Vijesti of 21 January 2010.



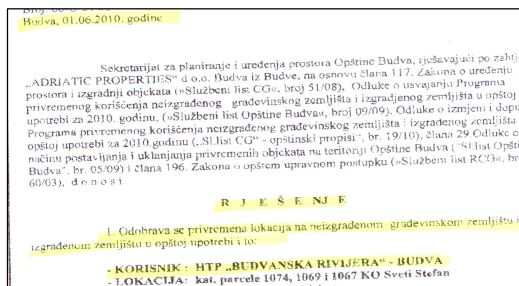
*An excerpt from the Demolition Decision*

Instead of upholding the law and tearing down the illegally constructed buildings, on 14 May the Local Council of Budva adopted the Decision to amend the Programme for Temporary Use of Undeveloped Buildable Land and Developed Land in General Use in 2010, to insert the buildings in the plan as temporary establishments, like newsstands or stalls.

At the time, the Speaker of the Local Council, Krsto Ljubanović said that “the investor was not allowed to build these so-called ancillary buildings without having procured permits for doing so. We know it is not temporary, but a three-storey high building...But, I will do all it takes, even if unlawful or illegal, to help Sveti Stefan open up this season”.<sup>9</sup>

The Mayor, Lazar Rađenović said at the time that they were “forced” into such a decision by the requests of the investor, and added that “we were asked by the Government as the signatory of the Lease Agreement to concede to these requests”.<sup>10</sup>

Based on such a decision, on 01 June 2010 the Secretariat for Spatial Planning and Development of the Municipality of Budva passed the Decision approving the “Adriatic properties” the temporary location at the undeveloped buildable land for the two illegally constructed buildings. This decision was signed by the then Mayor and deputy mayors, Rajko Kuljača, Lazar Rađenović and Milenko Medigović, and the current Secretary at the Secretariat for Spatial Planning and Development, Zlatko Dragović.



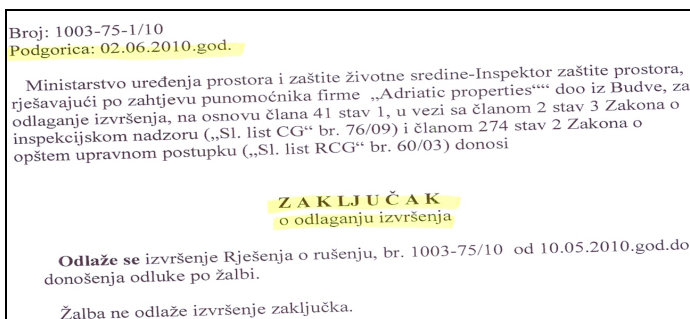
*The decision approving the temporary Location for the disputed buildings*

<sup>9</sup> An article in the weekly Monitor of 28 May 2010.

<sup>10</sup> An article in the daily Vijesti of 15 May 2010.

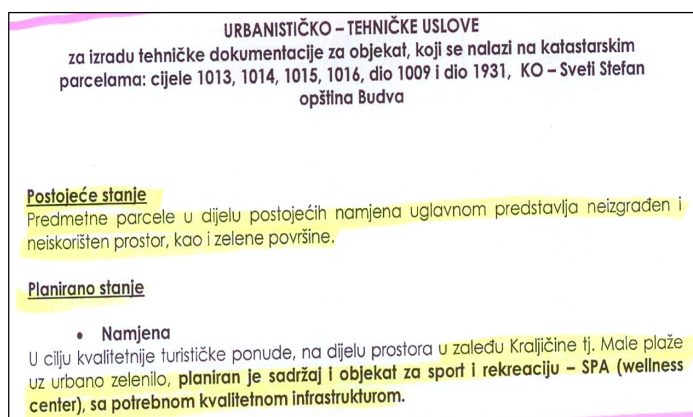
In its Decision, the Secretariat referred to Article 117 of the Law on Spatial Development and Construction of Structures. However, this provision of the law clearly stipulates that ancillary buildings include sheds, garages, store rooms, or prefabricated structures such as kiosks or movable stalls, clearly showing that in this specific case the law was violated, since solid construction structures were built in their stead.

Only a day after this decision of the Secretariat, or on 02 June, the environmental inspection deferred the enforcement decision, only to suspend the procedure altogether on 17 June, referring to this very decision of the Secretariat for Spatial Planning and Development.



*The Decision to defer the enforcement of the demolition order*

In order to continue such a legal status of the buildings in 2011, on 22 February 2011 the Local Council of Budva adopted the 2011 Plan of Temporary Establishments. At the council session, the councillor from the ranks of the governing Democratic Party of Socialists, Tijana Kotarac, said that on one hand it might seem odd that the buildings of such size, of solid structure, become classified as temporary establishments, but on the other hand, there is the direct guidance of the Ministry of Tourism and the new Minister to feature them as temporary structures to enable the operation of Sveti Stefan and, hopefully, its opening in the course of this year“.



On 06 April 2011, the Ministry of Sustainable Development and Tourism issued the Urban and Technical Requirements to the “Adriatic properties” for the building at the hinterland of the Kraljičina plaža, or the Mala plaža. In doing so, the Ministry prejudiced solutions disregarding the fact that the Spatial Plan for Budva (from 2009) envisaged

there the green belt and the absence of any plans that would allow construction in this zone.

The Municipality of Budva passed the Decision to Develop Urban Planning Project “Hotelski kompleks Chedi Kraljičina plaža” in December 2007. The Terms of Reference envisage the construction of a new representative 5-star resort instead of the “Kraljičina plaža” hotel.

At the same time, it was said that further development should be limited in the Miločer-Sveti Stefan-Crvena glavica area, with the exception of a few exclusive tourism residence (total capacity around 700 beds) and a certain number of other amenities. The hinterland to Kraljičina Beach is treated as a green area.

ugostiteljski objekti za pice i hranu i prateći objekti za opsluživanje područja.  
U cilju kvalitetnije turističke ponude, na dijelu prostora u zaleđu Kraljičine tj. Male plaže uz urbano zelenilo, planirati sadržaje i objekte za sport i rekreaciju-SPA (Wellness center), sa potrebnom kvalitetnom infrastrukturom (elektro, hidrotehničke i TT instalacije i dr.) i uz posebno poštovanje postojećeg stanja terena, ambijentalnih uslova, očuvanje i oplemenjivanje vrijednih zelenih površina, kao i maksimalno poštovanje uslova zaštite životne sredine.  
Planirati kolski prilaz iz pravca Hotela Miločer i Svetog Stefana, tako da bude lociran iza

predstavlja neprihvatljiva ekspanzija stambene izgradnje u neposrednom zaleđu Sv. Stefana, koju treba zaustaviti. U zoni Miločer-Sv. Stefan-C. Glavica treba ograničiti dalju izgradnju, sa izuzetkom manjeg broja ekskluzivnih turističkih rezidencija (ukupnog kapaciteta oko 700 ležajeva), i izvjesnog broja rekreativnih, sportskih i kulturno-zabavnih sadržaja i ekskluzivnih ugostiteljskih objekata.

Prilikom planiranja poštovati pozitivne pravne propise o standardima za turističke

*Excerpts from the ToR for the “Hotelski kompleks Chedi - Kraljičina plaža”*

Invoking the FAI Law, in early March 2011 MANS requested from the Spatial Planning Agency of Budva the Urban Planning Project “Hotelski kompleks Chedi - Kraljičina plaža”. Judging by their response, it seems that the plan drafting is currently in progress.

Agencija za planiranje prostora opštine Budva, kao organ nadležan za postupanje po navedenom zahtjevu, utvrdila je da:

- Odluka o donošenju Urbanističkog projekta „Hotelski kompleks Chedi – Kraljičina plaža“ nije donijeta;
- Kompletna dokumentacija, koja se, u smislu odredbi Zakona o slobodnom pristupu informacijama, smatra „informacijom“ vezano za UP „Hotelski kompleks Chedi – Kraljičina plaža“, javno je objavljena na sajtu opštine Budva [www.opstinabudva.com](http://www.opstinabudva.com) kao i u “Sl. listu CG – opštinski propisi” br.02/08 i to: Odluka o izradi i Programski zadatak za izradu UP-a „Hotelski kompleks Chedi – Kraljičina plaža“.
- Izvještaj komisije za stručnu ocjenu Prostornog plana Opštine Budva iz 2007.god.

Moreover, the Ministry of Sustainable Development and Tourism also told us that they had not approved the above plan yet since it had not been completed at the time.

Two Lease Agreements have been signed with “Adriatic properties” as the lease holder. The first agreement concerns the lease of hotels “Sveti Stefan” and “Miločer”, and the other to the “Kraljičina plaža” hotel, both signed in late 2006, entering into force on 15 January 2007.



The agreement stipulates 30 June 2008 as the completion date for reconstruction works at Sveti Stefan, and 31 December 2008 for the fully operational status of the “Kraljičina plaža” hotel, but these works have not been completed to this date.

On the contrary, the “Adriatic properties” company filed an application in September 2010 to the European Bank for Reconstruction and Development requesting the approval of a 37 million euro loan for the “Sveti Stefan Resort”. The application stated

- Faza 1 će obuhvatiti obnovu hotela Miločer (8 soba i apartmana) i ostrvo hotela Sveti Stefan (50 soba i apartmana), kao i neke infrastrukturne radove, administrativnu zgradu i dio objekata sa zabavnim sadržajem (restorani, teniski tereni i kafići), da bi se kreiralo novo odmaralište koje će raditi pod brendom “Aman Resorts”. Rekonstrukcija hotela Miločer je završena i hotel posluje od januara 2009. godine. Hotel ostrvo Sveti Stefan je trenutno u fazi renoviranja i planirano je da bude završen do kraja 2010. godine.
- Faza 2 će se sastojati od rušenja postojećeg Kraljičinog hotela i kasnije razvoj novog Kraljičinog hotela sa do 60 hotelskih soba, kao i 60 apartmanskih vila i Kraljičin hotel spa da radi pod brendom “Chedi”. Očekuje se da se Druga faza završi u toku 2012.

that the project, worth 90 million in total, will be implemented in two stages. The first stage would cover the restoration of the Miločer hotel and the Sveti Stefan island. The second stage implies the demolition of the existing hotel and the construction of a new 60-unit hotel, but also the construction of 60 villas and the Kraljičin hotel spa, to be operated by “Chedi”.

*An excerpt from the application for an EBRD loan*

This leads to a conclusion that the intended construction will be of an enormous scale and the Miločer Park and its hinterland, being among the rare preserved nature reserves at the coast of Montenegro, will be irrevocably destroyed.

In December 2010 the EBRD approved a 37 million euro loan to the Greek company. This is the first EBRD investment in the tourism industry in Montenegro.

The EBRD loan will be used to finance the re-development of the Sveti Stefan peninsula village and adjacent area along the Montenegrin Adriatic Sea coast, between the towns of Budva and Petrovac.

The project includes the renovation of the Sveti Stefan hotel and Milocer Villa, as well as the reconstruction of the existing Queen’s Beach Hotel. In addition, Adriatic Properties D.O.O. will build associated infrastructure, including apartments, restaurants and spa facilities.

*An excerpt from the EBRD decision granting a loan to the “Adriatic properties”*

On 16 February 2011, the Minister of Sustainable Development and Tourism, Predrag Sekulić signed an agreement supporting the restoration of the Sveti Stefan and reconstruction of Kraljičina plaža between the Government, the HTP “Budvanska Rivijera A.D”, the HTP “Miločer A.D”, the Adriatic Properties D.O.O, the Aidway Investments Limited, the General Hotel Management Limited, the Amanresorts Management B.V. and the EBRD. In doing so, the Government agreed to the execution of the loan granted by the EBRD.

It is unbelievable that already in the Lease Agreements the Government committed to appear as the guarantor for the loan to the leaseholder for carrying out the works.

Particularly given that the agreements envisage the leaseholder's investments of at least 40 million euros, leaves one wondering whether the Government guarantees restoration works with own funds.

According to the Project Support Agreement, in case of the "Adriatic properties" being in default with payments to the EBRD, the agreement would terminate and the EBRD would seek another company to take over the rights and responsibilities, but the Government undertakes in such an event to subordinate the payment of the annual rent to regular debt servicing.

#### Odjeljak 2.04. Odredbe o subordinaciji

- (a) Plaćanje Plaćanja zakupa odlaže se i podređuje godišnjem Planiranom redovnom servisiranju duga.

*An excerpt from the Project Support Agreement referring to subordination of rent to debt servicing*

Notwithstanding the fact that the "Adriatic properties" failed to meet its contractual undertakings and open the hotels within the time envisaged, in May 2011 the Government adopted annexes to both Lease Agreements modifying Article 10 in each to enable the transfer to third parties. **This means that the Project Support Agreement was signed first in direct contravention to Article 10 of the both Lease Agreements, excluding the transfer of rights to third persons, and only in May signed the annexes to enable that.**

Furthermore, the annexes modified the completion dates, this being in case of the "Kraljičina plaža" hotel 3 years after the adoption of the relevant urban plan. As for the Sveti Stefan, the date was rescheduled to 15 July 2011, but the leaseholder "Adriatic properties" was again in breach of the rescheduled deadline. On 01 June the first guests officially came to Sveti Stefan, announcing at the same time that "Sveti Stefan will be fully completed for the 2012 season, by which time the block 25 is to be completed and the issue with the Aleksandar Nevski Church resolved".<sup>11</sup>

1.3. U prvom odjeljku: DEFINICIJE I TUMAČENJE, član 1. stav 1.11. koji glasi "Predviđeni datum završetka znači 31. decembar 2008. godine" se mijenja i glasi "Predviđeni datum završetka znači 3 godine nakon usvajanja Detaljnog urbanističkog plana za tu oblast".

2.1. U prvom odjeljku: DEFINICIJE I TUMAČENJE, član 1, stav 1.15. "Predviđeni datum završetka znači 30. jun 2008. godine" se mijenja i glasi: "Predviđeni datum završetka znači 15. jun 2011. godine".

*An excerpt from the Annex to the Lease Agreement*

<sup>11</sup> An article from the daily Vijesti of 2 June 2011.

The lease agreements envisage the resorts to be open at least 11 months a year, which has not been observed by the leaseholder to this date.

As regards the rent, in September 2011 the “Adriatic properties” asked for tax facilities on the payment of rent for “Sveti Stefan” and “Miločer”, explaining that “Sveti Stefan” was not operational causing them damages.<sup>12</sup>

A few days later, the Executive Director of HTP “Budvanska rivijera” Vule Tomašević stated that “Adriatic properties” asked for reduction in rent and that they owed over half a million euro on this account.<sup>13</sup> According to the lease agreements, default in rent payment constitutes one of the grounds for lease termination.

## **28 PRAVO ZAKUPODAVCA DA RASKINE UGOVOR**

Zakupodavac može raskinuti ovaj Ugovor o zakupu koji stupa na snagu odmah nakon obavještenja Zakupcu u pismenoj formi ukoliko;

28.1 bilo koja od Renti ostane neplaćena 15 dana nakon uručivanja pismene obavijesti od strane Zakupodavca Zakupcu u kojoj se kaže da je prispjelo plaćanje potrebne zakupnine; ili

28.2 Zakupac krši bilo koju ugovornu odredbu ili uslov iz ovog Ugovora o zakupu koji se treba izvršiti ili ispoštovati od strane Zakupca i takvo kršenje ne ispravi u roku od 30 dana nakon dostavljanja pismenog obavještenja od strane Zakupodavca u kojem se navodi kršenje na koje se Zakupodavac žali i traži da se isto ispravi; ili

*An excerpt from the termination clauses*

To this date the exact amount of money invested by the “Adriatic properties” in the restoration of hotel facilities, leased to it for a period of 30 years, is not known.

<sup>12</sup> An article from the daily Vijesti of 17 September 2011.

<sup>13</sup> An article from the daily Vijesti of 05 October 2011.

### 3.3. Through Privatisation to Valuable Property

Non-transparent privatisation process in Montenegro was an opportunity for many an investor to get hold of valuable plots and buildings under the pretext of major investments that never came to life or only partly so.

The key role in such privatisations is played by the evaluation agencies and independent property evaluators thanks to whose evaluations the so-called "strategic" partners were able, at a low price, far below the market one, to acquire valuable state assets.

In its research, MANS examined several cases following this privatisation pattern and made the ensuing documentation available to the competent prosecutors.

Land evaluation frauds were most frequently detected in cases when investors would use the land purchased as the equity where it was in their benefit to show its real value which exceeded by several times what was their purchase price initially.

Within this publication, MANS is presenting two such cases and both refer to privatisation involving the Budva-based company "Beppler & Jacobson". The first case refers to the privatisation of the agricultural company "Sinjajevina" from Kolašin when the huge land owned by the company was evaluated at 120,000 euros, only to use the same land soon after sale as equity into a company and reach the value of close to 10 million euros.

The other case involving the same company refers to the privatisation of the hotel "Avala", one of the most attractive hotels at the Montenegrin coast. Thanks to unlawful judgments the company got hold of a hotel worth over 6 million euros by paying for it half the sum, somewhat over 3.2 million euros.

And finally, the "Južni Jadran" case shows, and has abundant documentation to prove, the way in which one of the favoured investors acquired a majority stake in this company, all on the account of valuable property held by this company at the coast of Montenegro.

## Case study 6: Južni Jadran

The “Južni Jadran” case refers to the privatisation of the tourism and hospitality company from Herceg Novi, that held over 100,000 sqm of valuable property in the most beautiful part of Montenegro’s coast, accommodating a large number of buildings.

The case shows how the Podgorica-based company “Carine”, that appeared as the buyer for the first package of shares, paying for that a trifle sum, instead of the real privatisation, pushed “Južni Jadran” into debt and liquidation, stripping them of valuable property.

This case shows one of the patterns in actions of the privatisation tycoons that appeared as buyers of once rich companies because of their property oly, and are indicative of abuse in business activity, against the public interest and in particular the interest of minority shareholders.

The Podgorica-based company “Carine” doo, owned by Čedomir Popović, purchased in January 2001, 30% of shares of the tourism and hospitality company “Južni Jadran”, which held property in Herceg Novi. “Carine” purchased shares form the Pension and Disability Fund at the time and the Employment Office for the total price of 247,632 German marks. In a special auction, Popović paid two marks for one share, although the nominal share rate was 40 marks.

Namely, there were no interested parties at the public auction held in December 2000, so the Privatisation Council organised in January the next year the special auction in which the value of shares fell down from 40 to 2 marks and where Popović appeared as the buyer.

Komisija za aukciju, Savjeta za privatizaciju Vlade RCG, uputjla je javni poziv za učešće na javnoj aukciji pod šifrom 0039240101 (i u dnevnom listu “Pobjeda”, izdatom na dan 12.12.2000.god. i za dane 30. i 31.2000.god. i 1. i 2.01.2001.god.) za prodaju 123.816 akcija odnosno dionica (od toga 92.862 akcija Republičkog Fonda PIO i 30.954 akcija Zavoda za zapošljavanje Crne Gore), izdatih od TUP Južni Jadran d.d. iz Herceg Novog, bliže označenih u čl. 1. ovog Ugovora, nakon čega je na javno održanoj aukciji, održanoj dana 24.01.2001.god. u Podgorici, u skladu sa važećom Uredbom o prodaji akcija i imovine preduzeća putem javne aukcije, obzirom da na početnu odnosno nominalnu cijenu akcija nije bilo ponuda, u novom nadmetanju putem specijalne aukcije postignuta je konačno ukupna prodajna cijena svih akcija (dionica) za iznos od 247.632 DM odnosno 2 DM, za jednu akciju, po kojoj cijeni je Popović Čedomir, kao direktor učesnika u aukcije D.O.O. “Carine” iz Podgorice, ponudio kupovinu predmetnih akcija, te proglašen njihovim Kupcem, sve kao u zapisniku komisije sa javne aukcije br. 03-56 od 24.01.2001.god.

*An excerpt from the contract of “Carine” purchasing shares of “Južni Jadran” for the price of two marks a share*

The entry of Čedomir Popović in the Herceg Novi-based company did not bring any positive business activity. The piece of news from April 2004 from the session of shareholders of the “Južni Jadran”, indicates that over the period the company’s capital, evaluated at eight million euros, was reduced by one million, the amount of three-year operating losses.

At the session the shareholders protested because of the financial statement presented to them consisting of one page only and presenting a half a million loss in the year 2003.



It was also reported that Popović continued purchasing vouchers from citizens and at the moment he held 67 percent of the company capital.

In December 2006, the "Južni Jadran" sends a request signed by the executive director Ranko Vujović, requests the Property Administration to transfer to the company the titles over property in Baošići of total area of 22.344 sqm with 11 buildings of the total gross floor area of 4,744 sqm.

In the request, Vujović referred to the Law on State Survey, Cadastre and Registration of Property and the Rulebook on Development and Keeping of Property Cadastre, stating that in our legal system there are only two forms of ownership - state and private. Accordingly, in Vujović's interpretation, instead of the right of use, the ownership titles should be registered over the property of "Južni Jadran".

*svojina.*  
Članom 83 istog Pravilnika je određeno da se „na nepokretnostima u državnoj svojini upisuje pored imaoaca prava državne svojine i korisnik nepokretnosti" (st.1),- što znači da uvijek za svaku nepokretnost mora biti unesen podatak čija je svojina ta nepokretnost, a evidentno je da u svojinskom režimu našeg pravnog sistema postoje samo dva oblika svojine „državna svojina" i „privatna svojina".  
*U skladu sa tim, prema određenjima navedenih propisa, za svaku*

*The first request for registration of titles submitted by "Južni Jadran"*

In February 2007 the Property Administration Herceg Novi rejected the request explaining that "Južni Jadran" did not provide any legally valid piece of evidence which would establish that the title over property was acquired in any legal trade. At the same time, under the Property Law, the Administration registered the property to the state, while the "Južni Jadran" was registered as the holder of the right to use.

Ocjenom svih dokaza, utvrđeno je da su djelimično ispunjeni uslovi iz člana 88. a u vezi sa članom 72. Zakona o državnom premjeru, katastru i upisima prava na nepokretnostima za ispravku upisa u listu »B« lista nepokretnosti 387 K.O. Bošići, na način što se JUŽNI JADRAN" AD Herceg Novi iz Bijele briše kao nosioci prava korišćenja na nepokretnostima označenim kao katastarska parcela 415, 417, 418, 419, 420, 421 i 422, sve K.O. Baošići, te da se istovremeno iste nepokretnosti upisuju kao svojina Republike Crne Gore sa 1/1 i pravom korišćenja "JUŽNI JADRAN" AD Herceg Novi iz Bijele bb sa 1/1, kako je regulisano i odredbom člana 7. Zakona o imovini Republike Crne Gore.

*An excerpt from the decision by the Property Administration Herceg Novi rejecting the request*

Several months later, in June 2007 the company "Carine" doo sent a request to the Property Administration Herceg Novi requesting the registration of titles over the company, with the total area of 99,813 sqm, belonging to "Južni Jadran". This involved sites in Sutorina, Meljine, Kumbor, Đenovići and Baošići, together with all the buildings found on the site.

With this request, the director and the owner, Čedomir Popović, referred to the Agreement of Debt Settlement by Transfer of Titles over Property, concluded on 14 June 2006 between the companies "Južni Jadran" and "Carine". Under this Agreement, signed by Čedomir Popović and Ranko Vujović, in late 2006 "Južni Jadran" had an outstanding debt to "Carine" of 4,844,056 euros.

It is not known what give rise to this debt, and the Agreement stipulates that the evaluators Vukašin Đuričković and Andrija Pavličević established that the overall market value of close to 100,000 sqm of property, together with the buildings, amounted to 3,488,877 euros.

Ugovorne strane saglasno opredjeljuju da nepokretnosti (zemljište i objekti) označene u članu 1 tačka c) ovog Ugovora, prema procjeni izvršenoj dana 07.05.2007.godine od strane stručnjaka (sudskog vještaka dipl.ing Vukašina Đuričkovića iz Podgorice ujedno i vodećeg procjenjivača i dipl.ing. Andrije Pavličevića iz Podgorice takođe vodećeg procjenjivača) da sveukupna tržišna vrijednost tih nepokretnosti iznosi 3.488.877,00 € (tri miliona četristo osamdeset osam hiljada osamstosedamdeset sedam eura) i to :

nepokretnosti upisane u listu nepokretnosti br. 174 KO Sutorina u ukupnom iznosu od 933.632,00€ (

*The provisions of the Debt Settlement Agreement in the section with the assessment of evaluators*

At the time of the agreement conclusion, as seen in one of the contractual provisions, the actual ownership over 94.59 percent of share capital of "Južni Jadran" was held by "Carine", meaning that the company settled debt with itself.

In addition, it is interesting that the parties agreed for the property transfer tax and other related costs to be borne by the transferor, i.e. the "Južni Jadran".

U smislu određenja Zakona o privrednim društvima, prenosilac, kao akcionarsko društvo, odgovara za sve svoje obaveze cjelokupnom svojom imovinom i njegov kapital je na dan zaključenja ovog Ugovora, podijeljen na 1.161.565 akcija izdatih i upisanih kod „Centralne depozitarne agencije” AD u Podgorici, od kojih sticalac ima u vlasništvu 1.098.832 akcije (od toga upisanih kod „Centralne Depozitarne Agencije” AD Podgorica na njegovo ime 596.398 akcija, i još 502.434 akcije koje mu je u svojini prenio Čedomir Popović, po osnovu Ugovora o prenosu svojine nad akcijama, ovjerenog kod Osnovnog suda u Podgorici pod Ov.br. 15215/2007 od 04.05.2007.god.) tj. stvarno vlasništvo nad 94,59 % od ukupnog broja upisanih akcija odnosno akcionarskog kapitala prenosioca, s tim što su prava i odgovornost svakog akcionara pojedinačno ograničeni do visine njegovog uloga odnosno srazmjerni broju akcija koje posjeduje.

*The clause of the Debt Settlement Agreement indicating the ownership share of "Carine" in the "Južni Jadran"*

In July 2007 the Property Administration Herceg Novi passed a partial decision by which, based on the Debt Settlement Agreement, it registered "Carine" alongside "Južni Jadran" as the title holders over the right to use, except over the three cadastre plots in Baošići. Dissatisfied with such a decision, in August the Podgorica-based company sent a new urgency to the Property Administration Herceg Novi, requesting again the registration of titles. On the same month, the cadastre in Herceg Novi adopted the additional decision registering "Carine" as the title holder over the right to use even the three plots in Baošići.

In early 2009, the minority shareholders of "Južni Jadran" approached the Tax Administration Herceg Novi, after having learned about the transfer of titles through the Debt Settlement Agreement. They requested the Tax Administration to establish whether property transfer tax was paid.

Acting as per their request, the Tax Administration established that no tax liability was reported and hired experts to evaluate the property. In their report, the expert evaluators Vladimir Gardašević and Đorđe Nikezić estimated that the market value of property as per the Debt Settlement Agreement on 14 June 2007 (the agreement signature date) amounted to as much as 22,574,225 euros. Accordingly, the tax liability was set at 451,484 euros.

Na osnovu svega gore izloženog smatram da cjelokupna prometna vrijednost građevinskih objekata na dan 14.06.2007. godine, po ovom Ugovoru iznosi ukupno 11.761.900,00 €

Ukupna procijenjena tržišna vrijednost po Ugovoru o izmirenju duga prenosom prava svojine na nepokretnostima sačinjenog između "Južnog Jadrana" AD iz Herceg Novog i "Carine" Doo iz Podgorice, na dan 14.06.2007. godine utvrđena je na iznos od (10.812.325,00 € + 11.761.900,00 €) 22.574.225,00 €.

*From the property evaluation by the Tax Administration experts*

In September 2008 Čedomir Popović and Ranko Vujović concluded another agreement, a sale agreement for close to 8,000 sqm of land in Bijela, together with the buildings. This refers to the popular hotel "Delfin", purchased by Popović in public auction. Interestingly, the public auction announcement was published in the daily "Republika", a former daily with negligible readership.

Under the contract, "Carine" purchased this property for 7,450,000 euros. The contract clauses stipulate that the debt of the "Južni Jadran" towards the Podgorica-based company at the time was 2,985,556 euros, and the parties agreed to set it off. "Carine" were obliged to pay the remaining amount, 4,464,443 euros, to the "Južni Jadran" within seven days. In other words, Popović was trading with himself.

It is noteworthy that only several days after the conclusion of the sale agreement, or more precisely on 06 November 2008, the voluntary liquidation procedure for AD "Južni Jadran" was launched.

With reference to the property once held by the "Južni Jadran", "Carine" retained the use arrangements until 2010. In February 2010 they sent a request to the Property Administration Herceg Novi to register their ownership titles over the said property by the workings of the law.

This time, the Podgorica-based company referred to the newly adopted Law on Ownership Titles and the State Assets Law, based on which the Property Administration adopted the guidance that "all companies with registered titles in the "use" regime in the property cadastre, with the entry into force of the Law on Ownership Titles acquired the right of ownership over such land unless some third party proves that it has already acquired the titles over such land."



Počev od 21.03.2009. godine (kada je stupio na snagu novi Zakon o svojinsko-pravnim odnosima ), po sili člana 419 tog zakona „ sa nadnaslovom Pravo pretvaranja iz društvene svojine ” svi dotadašnji imaoци prava upravljanja, korišćenja, odnosno trajnog korišćenja i raspolaganja na zemljištu u društvenoj svojini, sada državnoj svojini, - postali vlasnici tog zemljišta, u skladu sa čim je odredbom člana 420 istog zakona, sa nadnaslovom Upis prava svojine , da je utvrđena obaveza organu uprave za vođenje katastra nepokretnosti da na zahtjev dosadašnjih imaoца navedenih prava „dozvoliti brisanje društvene, sada državne svojine prava upravljanja, korišćenja, odnosno trajnog korišćenja i raspolaganja zemljištem i upisati pravo svojine u korist imaoца tih prava“.

*An excerpt from the application by “Carine” to be registered property titles under the new provision*

Acting as per this application, in March 2011 the Property Administration Herceg Novi changed the ownership regime and registered the company “Carine” as the owner of the property of close to 100,000 sqm, that once was the state property of the company “Južni Jadran”. Such a decision was based on the Law on Ownership Titles.

However, in late March the Supreme State Prosecution was involved in the whole case and lodged a complaint with the Ministry of Finance, since the decision did not state who the previous title holder was and on what ground. Also, the prosecutor indicated he was not given a say in the whole deal, as should have been done when state assets are involved.

Imajući u vidu sadržinu navedene zakonske odredbe, prvostepeni organ je bio dužan, da o pokretnju i vođenju postupka obavijesti Vrhovnog državnog tužioca, i na taj način mu omogući da se izjasni u ovoj upravnoj stvari. Jer, u konkretnom slučaju radi se o državnoj imovini tj. imovini Države Crne Gore, čija prava i interese, a u skladu sa članom 20 Zakona o državnom tužiocu zastupa Vrhovni državni tužilac.

*The request by the state prosecutor challenging the registration*

In September 2010 the Ministry of Finance upheld the appeal by the Supreme State Prosecution, acknowledging they were not given the opportunity to be the party to the proceedings, leading to the facts being wrongly established. This decision was signed by the then Minister, Igor Lukšić.

In November 2010, the Protector of Property Rights got involved in the whole case saying that he did not receive complete documentation and that he would give his opinion once the Property Administration Herceg Novi has scheduled the hearing. However, in December this Administration reissued the decision confirming the registration of titles to the benefit of “Carine”, with the Protector lodging an immediate appeal against it with the Ministry of Finance, stating it was unclear based on what proofs the validity of the company’s claims was established.

In February 2011, however, the Ministry of Finance rejected the appeal, saying now the provisions of the Law on Ownership Titles were correctly applied. This decision was signed by the Minister Milorad Katnić.

Rješenjem Uprave za nekretnine – Područna jedinica Herceg Novi od 18.11.2008. godine "Carine" DOO su upisane kao korisnik predmetnih nepokretnosti, te je u smislu imperativne odredbe člana 419. Zakona o svojinsko pravnim odnosima ("Sl list RCG", br.19/09) pravilno prvostepeni organ izvršio pretvaranje navedenog prava korišćenja u pravo svojine, shodno citiranoj zakonskoj odredbi.

Prema tome, prvostepeni organ je na pravilno utvrđenom činjeničnom

*The Ministry of Finance deciding for the second time in favour of "Carine"*

In April 2011 the Protector instigated a proceeding before the Administrative Court against this decision, and on 01 July the complaint was upheld. With this judgment, the Administrative Court quashed the decision by the Ministry of Finance, assessing that the procedural rules were breached in the case at hand, particularly since the opinion of the competent state authority was not obtained to confirm that the market price was paid for the land concerned.

The "Carine" company lodged with the Supreme Court a request for extraordinary review of the court judgment, but it was dismissed. On 23 September 2011 the Supreme Court established that the request was not allowed since the Administrative Court judgment was not final, but the case was restored to previous state and the competent authority was obliged to pass another act, to replace the quashed one.

### Case study 7: Beppler-Kolašin

The case of the sale of the company "Sinjajevina" from Kolašin is an illustrative example of how domestic and foreign property brokers got hold of huge state assets for little money.

Late last century the "Sinjajevina" company was deemed to be the backbone for the agriculture development in Kolašin, enabling the local farmers the export of their produce to Greece, Italy, even Libya. Moreover, the company possessed many buildings and valuable land.

Nevertheless, in April 2004 the public auction for the assets of the company, meanwhile bankrupt, was announced. No one applied to the public auction invited on three different occasions, until the one when the offshore company "Beppler & Partners" from the British Virgin Islands applied, represented by the lawyer from Budva, Branko Čolović.

The initial price for the total assets of the "Sinjajevina" company was estimated at 120,000 euros, according to the Report on Bankrupt Debtor's Assets Evaluation from August 2004. Through Čolović, the "Beppler" offered a 120,100 euro bid, which, being the only one, was accepted.

Finally, on 19 May 2006, the Property Sale Agreement was concluded between the "Sinjajevina" d.d. in the bankruptcy procedure as represented by the bankruptcy manager Bogdan Bulatović and the "Beppler & Partners" LTD represented by the lawyer Branko Čolović.

Article 2 of that Agreement stipulated that close to 3 million sqm of land, primarily forest and pasture land, but also 1,700 sqm of business premises and ancillary buildings were sold for 120,100 euros. The greatest share of land, close to 2 million sqm, is located within the cadastre municipality Lipovo, then the additional approximately 800,000 sqm in Dragovića polje, while the remainder of land is located between Raška Mioska and Osredci.

**Član 2.**

Kupoprodajna cijena za sve nepokretnosti prodavca iz člana 1. stav 1. tačka 1, 2, 3, 4, 5. i 6. ovog ugovora iznosi 120.100 (sto dvadeset hiljada i sto) Eura.

*An excerpt from the Sale Agreement*

By straightforward calculation we see that the "Beppler" company purchased land in Kolašin for the unbelievable 0.04 euros, or 4 cents, per a square meter. It is not known which evaluating agency set such a price, even more so given that it took place in 2006, during the property market boom.

That the 120,100 euros was not the real value of the land purchased became evident when the "Beppler" company put this land as equity in its daughter company "Beppler

Development Montenegro". It was incorporated on 17 May 2010, with the registered seat in Podgorica, Bulevar Sv. Petra Cetinjskog 1A/VI.

Article 13 of the company's Memorandum of Association stipulates that the offshore company "Beppler & Partners" provided 100% of equity in the form of property. The property used as equity for the daughter company incorporation were the plots purchased by "Beppler" for 120,100 euros.

**Član 13.**

Osnivač «Beppler & Partners» Ltd obezbeđuje 100 % početnog kapitala Društva, čime stiče 100% udela u Društvu, i to u stvarima, prenosom svih prava Osnivača na nepokretnoj imovini Osnivača, koja po proceni ... Izveštaju ovlašćenog procenitelja Mr. Krsta Tomaševića od 05.05.2010. godine vredi 9.855.799,00 Eura i to:

*An excerpt from the Memorandum of Association*

The same article continues by stating that according to the report of the certified evaluator Krsto Tomašević, of 05 May 2010, the equity value, i.e. the purchased land amounted to the **incredible 9.85 million euros**. The incorporation decision was signed by the founder's legal representative, Branko Čolović.

In four years only, the value of 3 million sqm of land grew from 120.100 euros to close to 10 million euros, which is an increase that can only be accounted for if "Beppler" found oil or precious metal deposits in the pastureland. Nevertheless, it is much more likely that the evaluation of the once property of the "Sinjajevima" company was intentionally devalued to acquire valuable land with little money.

It is not difficult to conclude that someone enabled the "Beppler" company to make huge profits against the public interest, primarily against the interest of the workers of "Sinjajevina". This is unfortunately yet another example of the sale of companies in the North of Montenegro, which had a huge economic potential, but fell victims of the so-called transition that actually served as a smoke screen for the plain robbery of state resources.

There are no official data of who the beneficiary owners of the "Beppler Development Montenegro" are, since its founders are hiding behind the offshore destinations. The only thing known is that their legal representative is Branko Čolović and the last registered official mail address was the "Bianca" hotel owned by Zoran Bećirović.

For quite a while now Branko Čolović has been recognised as the attorney of the Bećirović family and their companies. Čolović represented "Beppler" on the occasion of purchase of the Avala hotel, and it was him who signed the disputed agreement with Ivo Armenko, the then director of "Budvanska rivijera". Čolović also represented the late Dragan Bećirović and his partner Miloš Marović, the son of Svetozar Marović, in the deal for the water park development at the Topliš hill.

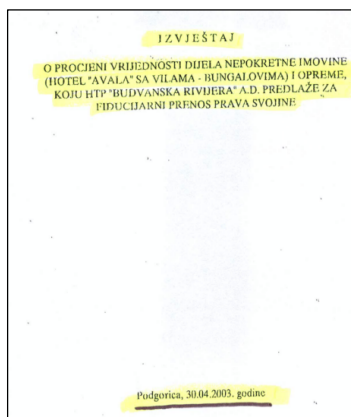
According to the data from the Central Register of the Commercial Court, Čolović is currently an authorised representative of a Russian company Sonuba Montenegro to which back in 2007 the Mayor of Bar, Žarko Pavićević, sold a plot of land owned by the municipality for 32 million euros for a construction of a hotel resort at Maljevik.

Interestingly, in this deal and in auction for the plot, Sonuba was previously represented by Ana Kolarević, sister of the former Prime Minister.

The said resort has never been built, and after the Russians have allegedly left Sonuba in 2010, a Novo Bećirović was appointed the executive director. According to the data available, an offshore company registered in the Seychelles with unknown ownership structure is behind this company.

### **Case study 8: Beppler-Avala**

This case study contains documents confirming the suspicions that the sale of the Avala hotel was a harmful deal for "Budvanska rivijera", but also leaves room for suspicions that the whole deal was accompanied by corruption. The sale agreement for the hotel and villas of the "Avala" complex was concluded on 16 January 2004 with the British company "Beppler & Jacobson Ltd" for the amount of 3.2 million euros. For this amount, Beppler became the owner of both the old and the new section of the Avala hotel, the villas, the indoor and outdoor pool, and several ancillary buildings.



Apart from the British company Beppler, that eventually turned out to be owned by the resident of Budva, Zoran Bećirović and Russian capital of unknown owners, a Danish company "Merienlist hotels and casinos" also offered a bid for the hotel offering 7.5 million euros for the buildings and the land.

Given that this company allegedly failed to provide documents in time, the tender was cancelled. Bećirović and his Russian partner complained against the Council's decision to cancel the tender and asked the sale agreement to be awarded to them as the second-ranked bidder. The court had a final say in this case, or more specifically the judgment passed by Ana Kolarević who

was then the presiding judge, by which Avala was finally transferred to Bećirović and the Russians at the price of 3.2 million euros.

It is not known based on whose evaluation did the Privatisation Council set the price at 3.2 million euros, because MANS holds a document on evaluation of the land and the buildings done 8 months before the conclusion of the contract confirming that the value of the Avala complex was twice the one awarded by Ana Kolarević.

On 23 May 2003 the HTP "Budvanska rivijera" concluded with the Ministry of Finance the Agreement of fiduciary transfer of the ownership titles over immovable property. On behalf of the Budvanska rivijera, the agreement was signed by Ivo Armenko, the then General Director, and Miroslav Ivanišević, the Minister of Finance at the time.

The contract referred to the fiduciary transfer of titles over a part of the Avala hotel to secure the payment of 1.3 million US dollar debt owed by the Budvanska rivijera to the Ministry of Finance.



**UGOVOR  
O FIDUCIJARNOJ PRENOŠU PRAVA SVOJINE  
NA NEPOKRETNIM STVARIMA**

Zaključen u Podgorici, dana \_\_\_\_\_ 2003. godine, između

**1. VLADE REPUBLIKE CRNE GORE - MINISTARSTVA  
FINANSIJA**, koju zastupa MIROSLAV IVANIŠEVIĆ,  
ministar, s jedne strane (u daljem tekstu: **POVJERILAC**)

**2. HTP "BUDVANSKA RIVIJERA" AD - BUDVA**, koju  
zastupa IVO ARMIKO, generalni direktor, s druge  
strane (u daljem tekstu: **DUŽNIK**)

**Član 1**

**DUŽNIK** se obavezuje da, radi obezbjeđenja duga u ukupnom iznosu od **1.341.606,34 USD**, i to: glavnica 1.118.005,28 USD i kamata 223.601,06 USD, preneše na **POVJERILAC** pravo svojine na objektu br. 1. na katastarskoj parceli 2434 površine 3494 m<sup>2</sup> u osnovi, spratnosti Iig - Hotel "Avala" - novi dio u Budvi, ukupne površine 13.962 m<sup>2</sup> koji je upisan u list nepokretnosti 355 K.O. Budva, čija procijenjena vrijednost od strane Direkcije za nekretnosti Crne Gore - Područna jedinica Budva, iznosi **4.202.562,00 €**.

**Član 2**

For the needs of concluding this Agreement, Budvanska rivijera has done a prior evaluation of a part of its property referring to the Avala complex. The document of 30 April 2003 entitled the Evaluation Report for a Share of Immovable Property (Hotel "Avala" with villas/bungalows) and the Equipment, the land and buildings of the Avala hotel were evaluated at 7.25 million euros before depreciation, or some 6 million euros after depreciation.

Red. broj	NEKRETNOSTI (GRAD. OBJEKTI, ZEMLJIŠTE, INFRASTRUKTURA)	KATEGORIJA GRAĐEVINSKIH OBJEKATA	GOD. ZAVRŠ. IZGR. OBJE.	KOMISNA NETO POVRŠ.	TRŽIŠ. OBJEK. 30.04. 2003.	VRIJEDNOVOG NA DAN 30.04. 2003.	AMO RT	KV ODR	PROC. TRŽIŠ. NA DAN 30.04. 2003.
					Jed. cij. Eur	Ukupna cijena Eur			Eur
1.	Hotel "Avala" novi dio	Zidani objekat sa AB stubovima, međ. spr. konst. AB ploča N=100	1983.	12.962	350	4.886.700	8,40	5,60	4.202.562
2.	Hotel "Avala" stari dio		1983.	2.266	350	793.100	8,40	5,60	682.066
3.	Zatvoreni bazen		1983.	635	350	222.250	8,40	5,60	191.135
4.	Otvoreni bazen	AB konstrukcija N=100	1983.	490	250	122.500	8,40	5,60	105.350
5.	Vile (bungalovi)	Zidani objekat AB stubovo krov drveni N=83	1965	2.832	200	566.400	23,30	5,70	396.480
6.	Infrastrukturni sadržaji	Priključci na VK EL TT ujedjenje terena N=40	1983.		10% od vrijednos. objekata	6.590.950x 0,10= 659.095	26,00	4,00	461.367
						<b>7.250.045</b>			<b>6.038.960</b>

*An excerpt from the evaluation report*

Thus, the evaluation chart quoted the value of the new section of the hotel to be 4.8 million euros before depreciation, the old part of the hotel 793,000 euros, the indoor pool some 222,000 euros, the outdoor one about 122,000 euros, the villas/bungalows some 200,000 euros, while the infrastructure facilities were estimated at some 660,000 euros.

The Commission for Property Evaluation of the Budva-based cadastre, chaired by Mirjana Marović, the head of the cadastre service and sister to Svetozar Marović, agreed with such evaluation.

Republika Crna Gora  
Vlada Republike Crne Gore  
DIREKCIJA ZA NEPOKRETNOSTE I FIDUCIJARNA  
PODRUČNA JEDINICA BUDVA  
Brij. 467-464-464/63  
Budva, 22.05. 2003. godine

Posrednik za procjenu nepokretnosti u postupku i prilikom fiducijarnog prenošenja prava svojine za teritoriju Opštine Budva saglasna je sa procijenjenom vrijednošću dijela nepokretnosti imovine (Hotel "Avala" sa vilama - bungalovima) koja HTP "Budvanska rivijera" AD predlaže za fiducijarnu prenosu prava svojine, kako je i procijenjeno u Izvještaju HTP "Budvanska rivijera" AD iz Budve, od 30.04. 2003. godine.

KOMISIJA

1. Mirjana Marović, predsjednik

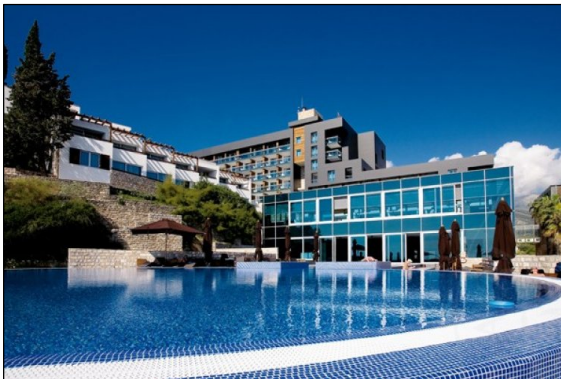
2. Pavao Anđelić, član

3. Spasimir Milićević, član

This means that during the tender procedure the Avala hotel was offered for sale at a price of 3.2 million euros, while at the same time it was used as a lien for setting off the debt with the Ministry of Finance, but with twice that value.

Nevertheless, notwithstanding such an evaluation, on 20 November 2003, the Privatisation Council passed the decision to sell the whole "Avala" complex to "Beppler & Jacobson". The Privatisation Council at the time was chaired by the then Prime Minister, Milo Đukanović, the deputy chair was Veselin Vukotić, a professor at the School of Economy, while the members were Minister of Tourism, Predrag Nenezić, the Minister of Economy, Darko Uskoković, the Director of the Agency for Economic Restructuring, Branko Vujović, the Director of the Health Insurance Fund, Ramo Bralić, and the President of the Free Trade Union Confederation, Popović.

The Privatisation Council referred to the Supreme Court judgment of 30 April 2004 passed by the panel presided by Ana Kolarević. A month after the judgment awarding the sale of Avala for 3.2 million euros, Budvanska rivijera commissioned the new evaluation now assessing the value of the hotel complex at some 7 million euros.



*Avala Hotel today*

This question raised here is what evaluation of the property of Avala prompted Ana Kolarević into passing the judgment, and whether it is possible at all to have up to 4 million euros difference between evaluations.

It is particularly noteworthy that the judge Ana Kolarević soon after such a judgment left the bench and became a lawyer, having among others "Beppler & Jacobson" as her client.

### 3.4. "Worthy Guys"

This section contains the case studies which show to what extent the competent authorities and their heads at the state and the local levels are ready to violate laws and regulations valid in Montenegro to protect the privileged individuals, particularly if this involves the persons known as controversial businesspeople and the persons already marked as belonging to the criminal milieu.

The need to weaken and break away the linkages between the authorities and the organised crime is a recommendation Montenegro has been receiving for several years now by the European Union, through the mechanism of reports assessing Montenegro's progress on its EU accession path.

Unfortunately, the cases presented below show these linkages to be still persisting strongly in urban planning, even ministers do not restrain from violating legislation only to accommodate the wishes of investors.

Hence, the first case study describes the case of a commercial building in the vicinity of Budva illegally constructed at the plot of land owned by the "controversial" businessman from Nikšić, Brano Mićunović, believed to be the unofficial boss of the Montenegrin criminal scene. As many as two ministers responsible for urban planning in two different Governments were involved in legalisation of buildings owned by Mićunović, first through omitting the duties of inspection supervision over illegal construction, then through amendments to plans to insert the illegal buildings in legal plans.

The second case describes the dealings of Naser Kelmendi with the Municipality of Ulcinj and how it was made possible to him, in contravention to law, to legalise his illegally constructed buildings within the territory of this municipality.

As a part of this study, MANS particularly looked into the ways in which Kelmendi would pay to the account of the Municipality of Ulcinj substantial amounts of money in cash, as a compensation for legalisation of buildings, given that Kelmendi was identified by the President of the United States of America as one of the key drug lords in this region.



## Case study 9: Mirište of the Mićunović Family

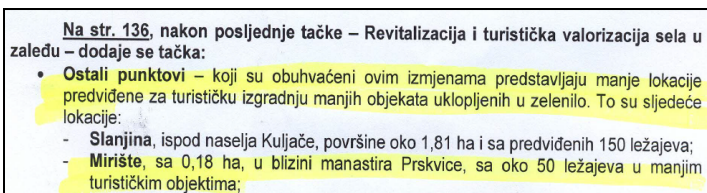
This case study is a classical example of misuse in office with a view of legalising illegal construction of privileged individuals. The data obtained by MANS are indicative of the fact that the disputable buildings located on the plot owned by the controversial businessman Branislav Mićunović were built between November 2007 and May 2008, at the time when the function of the minister responsible for urban planning was performed by Branimir Gvozdenović. The construction commenced on a land that by then valid Spatial Plan of the Municipality of BUdva was defined as an olive grove, the full construction of the two buildings, one of as many as eight storeys, went unobstructed.



It is not known whether the inspection led by Gvozdenović ever intervened at this site, but it is quite certain that the building has not been demolished notwithstanding the fact that illegal construction went on for full 7 months.

Apart from putting up with illegal construction that was going on at the plot owned by Mićunović, in 2009 the former minister responsible for urban planning gave his approval for the amendments to the Spatial Plan of Budva, now envisaging for the plot owned by Mićunović, instead of an olive grove, the development of tourism facilities. Gvozdenović then approved the plan which was the first step towards the legalisation of illegal buildings at Mirište, but also an attempt to cover up for own non-compliance with laws given the total absence of inspection supervision over the illegal construction on this site.

After Gvozdenović, the legalisation of illegally constructed buildings at the plot owned by Mićunović was taken over by his successor, the current Minister, Predrag Sekulić. In late November 2010, the Municipality of Budva requested from the Ministry for Sustainable Development and Tourism the consent to the draft plan for "Mirište". The draft developed by the Municipality fully included the illegally constructed buildings at the plot owned by Mićunović, although in contravention to the higher-rank plan - the municipal Spatial Plan. This plan envisaged several smaller-size buildings on this site, blending with the surrounding greenery, while an eight-storey building was already actually built there, now made part of the draft plan in its full size.



*An excerpt from the Spatial Plan of Budva*

Regardless of the above, the line ministry gave its approval on 10 May 2011 noting that the draft plan was aligned with the higher rank plans, which simply did not correspond to the truth. The consent was signed by the Minister Predrag Sekulić.

Following the public discussion, the Municipality of approved the draft plan for "Mirište" still containing the solutions in contravention to the higher rank plan. In June 2011, Sekulić again put his signature on this document and gave his consent, again disregarding the irregularities.

Vašim dopisom br. 001-1379/1 od 05.07.2011. godine, shodno članu 46 Zakona o uređenju prostora i izgradnji objekata («Službeni list CG», br.51/08), dostavljen je **Predlog Lokalne studije lokacije „Mirište“**, koji je urađen od strane „DEL PROJEKT“ d.o.o. iz Budve.

Ministarstvo je pregledom Predloga plana i ostale dokumentacije, ocijenilo da je postupak njegove izrade i razmatranja tekao u skladu sa zakonskom procedurom, te daje **SAGLASNOST**.

#### *Approval for the Draft Plan for Mirište*

The actions taken Gvozdrenović and Sekulić give rise to suspicion of well-concerted efforts of the line ministry to preserve the buildings at the plot owned by Mićunović at all costs, even if it goes against the laws and plans.

MANS previously indicated the manifest mismatch between the disputed plan and the higher rank plans and the law, and invited the local councillors not to give their votes to such a plan. The opposition parties responded to the call, even the smaller coalition partner, the SDP. Regretfully, the plan was adopted by the voted cast by the councillors from the ranks of the DPS, proving once again their persistence and loyalty to the interests of quasi-strategic investors that have utterly devastated the space of Budva over the past several years.

MANS filed a criminal report with the Supreme State Prosecution against the Minister of Sustainable Development and Tourism, Predrag Sekulić, and the current Political Director of DPS and former Minister responsible for spatial planning, Branimir Gvozdrenović, for suspicions of misuse of office and negligent performance of inspection supervision in the process of plan adoption which legalised several buildings located at the land owned by the businessman from Nikšić, Branislav Mićunović.

In the criminal report MANS, therefore, requested from the prosecutor to interrogate as a part of the same investigation, also the owner of the land, Mićunović as regards the communication with the former and the current ministers, but also the former Mayor of Budva, Rajko Kuljača, since it was Kuljača who in mid 2009 passed the decision to develop the plan for Mirište to legalise the building existing there.

In addition, MANS also investigated into the history of ownership over the disputed plot today accommodating the two illegally constructed buildings. According to the data available to us, Branislav Mićunović became the owner of the plot in April 2008, after having purchased it for 500,000 euros from Dragan Radusinović who manages the MIG Investment Fund. Interestingly, Radusinović previously purchased the same plot for 100,000 euros, less than two years before reselling it to Mićunović for five times the amount. Although the buildings were developed at the time of trade with the plot, none of the sale agreements mentions the existence of any building under construction thereon.

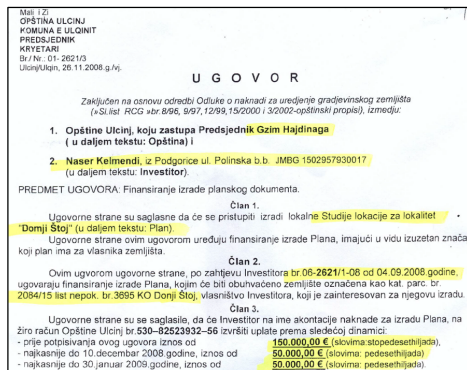
## Case study 10: Kelmendi & Hajdinaga

According to the data obtained by MANS, in 2008 Naser Kelmendi paid 225,000 euros to the Municipality of Ulcinj for legalisation of his illegally constructed building in Donji Štoj, Ulcinj. To this date it remains unknown what the Municipality of Ulcinj spent the money on given that the relevant plan has never been developed nor has Kelmendi ever been issued the construction permit.



In early September 2008, Naser Kelmendi approached the Municipality of Ulcinj asking for the advance payment of communal infrastructure fee for a mixed residential and commercial building in Donji Štoj zfor which he claimed at the time that it was built back in 2003.

Quite interestingly, in an interview for the daily Vijesti, Kelmendi claimed the hote was completed in 2006 and that one of the owners of "Grand", Ranko Ubović, helped him with the concrete. Later, as he said, he was aking the concrete from "Bemaxa", but it remains unclear what it was used for since "Bemax" was established on 29 January 2007, a hear after the Kelmendi' building in Donji Štoj was finished.



Based on this applciaiton, in late November 2008 the Municipality of Ulcinj entered into an Agreement on Funding Plan Development with Kelmendi. The agreement envisaged the Municipality of Ulcinj to draft the Local Location Study "Donji Štoj" o legalise the building by Kelmendi, and to be fianced by Kelmendi himself with 250,000 euros.

The Agreement also stipulated that the Municipality would recognise such payments as the advance payment of communal infrastructure fees for the developer,

Kelmendi.

After concluding such an Agreement, out of the agreed sum of 250,000, Kelmendi paid to the Municipality of Ulcinj the total of 225,000 euros, by transferring 90,000 eurs from his account held with Prva banka tothe account of the Municipality of Ulcinj, while 135,000 euros were paid in cash at the bank counter.

The data obtain by MANS lead to the question of what actually Naser Kelmendi financed given that no construction permit has been issued for this building as yet, and that it is still registered with the Property Administration with an encumbrance "built without construction permit ".

*Receipts for cash payments*

MANS received from the Secretariat for Urban Planning and Spatial Development of Ulcinj a written confirmation that the Municipality of Ulcinj never issued the urban planning approval to Naser Kelmendi, nor has any construction permit been ever issued to his name. In addition, the same Secretariat confirmed that the Municipality of Ulcinj never adopted the Decision to develop the local location study for Donji Štoj. Hence, it remains unclear on what were over 200,000 euros paid by Kelmendi supposedly for drafting the plan and as advance payment of communal fee actually spent on.

In addition, the amount paid Kelmendi to the Municipality of Ulcinj is also questionable, i.e. it is not clear how the municipality calculated the figure of over 200,000 euros. The costs for drafting a study of his type range between 15-20,000 euros. On the other hand, the advance payment given by Kelmendi exceeds many times the actual payable amount for this zone in Ulcinj.

It is also not known whether the Montenegrin Anti Money Laundering Administration and Terrorism Financing ever controlled these transactions between Kelmendi and the Municipality of Ulcinj, particularly given the controversy surrounding the name and business dealings of Naser Kelmendi. There is no information either whether Prva banka reported the cash payment given that the amount of over 130,000 euros which was paid with the span of several days is bound to raise some red flags.

A plot of close to 1,000 sqm on which a hotel was built was bought by Kelmendi or the amount of 9,500 euros from Mujo Redža, a controversial businessman from Ulcinj previously caught by the police on the suspicion of having committed the offence of unlawful possession of arms and explosive materials.

The agreement with Naser Kelmendi is only one of over 70 agreements which the former Mayor of Ulcinj Gzim Hajdinaga made with investors with the intention of advance payment of communal fees for the purpose of legalisation of existing buildings or intended construction of the new ones.

*The Agreement by which the plot was bought from Redža*

The value of the 74 agreements made available to MANS by invoking the provisions of the FAI Law amounted to close to 2.5 million euros. Such a practice of collecting communal fees started after the adoption of the Mayor's Conclusion of 01 November 2007 stipulating that advance payments can be collected from investors for illegally constructed buildings with the aim of improving inflows to the municipal budget.

The rights and responsibilities of citizens, in this related to the payment of the communal infrastructure fee, may not be stipulated by individual acts, as Hajdinaga did with this Conclusion, this Conclusion made it possible for the Municipality of Ulcinj, in contravention to laws and valid plans, to unlawfully collect the communal infrastructure fee from prospective investors, but also from those who already illegally constructed buildings.

On one hand, this factually meant the beginning of legalisation of such buildings, and on the other, it prejudiced the adoption of plans and their contents, promising those who paid such fees that their buildings would be inserted in plans.

It is particularly disconcerting that most of the plans whose drafting was financed in this manner do not exist even in their draft versions, nor is it known when the Municipality of Ulcinj would honour its commitments on this account. The form of the agreement is particularly problematic since in majority of cases it does not contain any information on the timeframe within which the Municipality is to meet its commitments, and quite often not even the data on plots for which the fee was paid.

In addition, although the funds thus collected should have been spent on communal infrastructure, in a large number of such agreements it is expressly stipulated that the investor "undertakes to develop himself (at own expense) all the power, water and sewage connections and communication lines, and all other connections needed using own means in line with the permits received from relevant public companies. The investor undertakes at own expense to fully execute the removal of possible ground or aboveground lines, carry out remediation and any other works needed.

Given the absence of plans and that investors were obliged to provide for utilities connections in their plots, it is quite certain that the money collected on the account was un-purposefully spent the local government.

Apart from Naser Keljmendi, Hajdinaga collected larger amounts on this account also from Mujo Redža, a controversial businessman from Ulcinj, amounting to 180,000 euros, Džaudet Cakuli 150,000 euros, and 83,000 euros from the owner of the company Franca, Himli Franca, and the greatest individual sums were collected from the "Sea Terra Bay Properties" - 300,000 and "Casa Valdano" - 323,000 euros for communal infrastructure fee to the previously purchased plots.

Each of these agreements was concluded based on Hajdinaga's decision adopted in contravention to the Law on Local Self-government, and thus are null and void.

## 4. ORGANISED CRIME IN URBAN PLANNING

### The case of the Mayor of Bar

Between 2010 and 2011 MANS carried out an investigation into the business dealings of the Municipality of Nar and its Mayor, Žarko Pavićević, that took several months. The case of the Mayor of Bar is peculiar in many respects and renders it possible to get an insight into numerous negative phenomena accompanying the planning and construction processes in Montenegro o the example of one public official.

In addition, the example of Pavićević is interesting also from the point of view of accumulation of executive powers in the hands of one person, and the fact that Pavićević as the person at the front of urban planning in Bar also has his own construction company that in addition to construction of buildings also engages in expert supervision, plan drafting and sale of construction material is yet another curiosity. Quite interestingly, this company is at the same time the owner of many a piece of land on appealing sites in downtown Bar.

Over several months, MANS examined several aspects of the work of Pavićević, starting from his involvement in modification to plans, supervision over their implementation, conclusion of sale agreements for buildable land and collection of communal infrastructure fees, including even the communications Pavićević had with individuals and corporate developers in Bar. Special emphasis was placed on the role of his company ZIB in planning processes and in construction of residential and commercial buildings.

Thus we investigated into the role Pavićević played in the unlawful sale of the Bar-based company “Tehnopromet”, but also the construction works on the sport hall, that ZIB, thanks to the then Mayor Borislav Lalević, paid in valuable buildable land through an unlawfull trade off. In addition, MANS examined the breach of contract with the Postal Services of Montenegro, where it was made possible to ZIB to retain the business of a residential building notwithstanding.

We particularly examined his role in modifications of plans wher we detected many examples of legalisation of buildings constructed by both by ZIB and by other developers. Partnership with Miodrag Đurović, brother of Slobodan Đurović - Kardinal<sup>14</sup>, that resulted in illegal construction, together with the buildings developed by the Montenegrin-Russian company Longrun, were the most extreme cases of legalisation of illegal constructions in Bar.

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<sup>14</sup> Slobodan Đurović - Kardinal was charged with the murder in late November 2008 of the Croatian journalist and owner of the magazine “Nacional” who investigated and reported of the Balkan mafia and tobacco smuggling.

Moreover, the modification of plans served to Pavićević also to change the use of planned buildings, as is the case with FADIS, but also the extreme increase in the size of the buildings already included in the plan. This has increased the value of plots several times that certain individual and companies purchased from the municipality, thus causing substantial damages to the local budget. The most extreme example of such actions practiced Pavićević is the increase in allowable building size on plots owned by Aco Đukanović, brother of the then and the current Prime Minister, Milo Đukanović, where starting from the initial 21,000 sqm GBA, now it increase to as much as 66.000 sqm of mixed residential and commercial premises.

Through its examinations, MANS managed to come up with the **structure scheme** suspected of commission of crimes in an organised manner over a prolonged period describing in detail the official capacities of the persons reported , but also their role in the structure.

Thus the reported Pavićević, who was obviously on the top of hierarchy of the reported person, who was obviously on the top of hierarchy of all the reported person, had the role and the tax to conclude agreements on transfer of titles over buildable land, to subsequently pass decision on modification of plans to increase the size of buildings thus substantially increasing the value of plots and buildings, to give term of reference for plans, to draft plans through his own companies, to design buildings, to exercise construction supervision and execute construction works.

The structure of the person reported include a former minister responsible for urban planning Branimir Gvozdenović and the Secretary to the Ministry for Sustainable Development and Tourism, Zoran Tomić, had a role and a task to give their consent to plans that Pavićević modified in the described manner, to issue construction permits that subsequently legalise buildings that did not comply with the original plans, to issue certificate of occupancy, which enabled the use of the buildings thus constructed, to issue urban and technical requirements for buildings, and in the exercise of inspection supervision to fail to take measures and actions they would otherwise be obliged to take by law with a view of preventing illegal construction and for criminal prosecution of perpetrators since illegal construction was criminalised.

The reported Nebojša Milošević, through his company Basketing, was hired by the reported Pavićević with the role and task to draft plans increasing the size of buildings and consequentially substantially increasing the value of plots and the buildings, to carry out construction supervision that did not comply with the original plans and to carry out construction works.

The reported Ratko Vujačić had the role and the task of carrying out works contrary to the valid plan and to increase the value of the plot and the building where they act as a developer.



To that effect, according to the official public admission and the public admission of the reported Pavićević, the reported Vujačić had the consent and approval of Pavićević to build an illegal building and a guarantee that Pavićević would secure subsequent legalisation of the building, and that no measures would be taken to prevent illegal construction.

During the investigation, MANS managed to discern the pattern of behaviour used by this structure, which together with the number of offences they are charged with, leads to a conclusion that these persons planned their actions for a prolonged period of time or indefinitely.

The scheme also leads to a conclusion that the reported persons in their actions used commercial and business structures, particularly in the field of construction industry, as well as the capacity and the function of the reported Pavićević, Gvozdenović and Tomić indicates that in their actions they exercised influence over the political, the legislative and the executive power.

The case studies presented below explain in more details and provide evidence for the investigation carried out by MANS as regards the urban planning in the Municipality of Bar.





## Case Study 11: 275.178m<sup>2</sup>

The data of Real Estate Administration (REA) Bar that came to be known to MANS are indicative of suspicion that ZIB, assisted by the then Head of the REA Bar Novica Vučković, has unlawfully acquired land, i.e. that there were no legal grounds for the given property to be registered to ZIB.

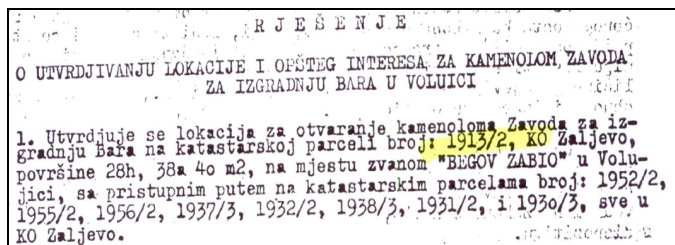
The case file for the disputed plot no. 1913/2, cadastre municipality Zaljevo, Bar, does not contain any legally valid document based on which it would be possible to register the given plot to ZIB. What the case file does contain, though, is the encumbrance of restitution claims to the benefit of Smiljka Perazić and others, as well as the encumbrance placed by "Morsko dobro" (Coastal Zone Management, a public company).



Moreover, over the years this property was several times encumbered with mortgage as a security for ZIB to be granted loans.

By the decision of the Local Council of Bar in 1980 the disputed plot was designated as a quarry site and awarded for USE to the then state-owned company "Zavod za izgradnju Bara" justified by the public interest for rapid reconstruction of the Bar municipality following the disastrous earthquake in 1979.

In addition to this, the case file also contains the decision by which ZIB was approved the construction of a quarry on the disputed plot, as well as the approval from 1981 issuing the certificate of occupancy for the quarry. Apart from these documents, the Bar cadastre office holds no other papers placing ZIB in connection with the land.



### Decision on quarry location

Rješavajući po zahtjevu Zavoda za izgradnju Bara - Bar, a shodno odredbi iz člana 46. i 47. Zakona o rudarstvu ("Službeni list SRG" br. 32/76), Republički sekretarijat za privredu kao organ nadležan za poslove rudarstva, izdaje

### O D O B R E N J E

Da Zavod za izgradnju Bara - Bar, može po rješenjima Projekta za otvaranje i eksploataciju kamenoloma krečnjaka "Veljo Zabio" vršiti eksploataciju ove mineralne sirovine.

### Permitt for quarry

As a state-owned company, in 2000 ZIB was transformed into a share-holding company with a package of shares held by the then Executive Manager, Žarko Pavićević. According to the data held by the Central Depository Agency, today Pavićević is the majority owner of ZIB, with a stake of over 53%.

Following the ZIB privatisation, upon their request, the REA Bar, in its decision of 10 July 2002, assigned the land and the buildings found on the disputed plot from the Municipality of Bar to ZIB, without a single document pursuant to which it would be legally possible. The case file for this plot does not contain any sale agreement between the Municipality and ZIB, nor any decision of any authority to make such assignment of land from the Municipality of Bar to Žarko Pavićević's company lawful.

There is no information as to whether Pavićević paid for this land and in what amount, or whether it was assigned to him free of charge and following which procedure. Such a decision simply assigning to Pavićević the title to over 270,000 m<sup>2</sup> of land was verified by the then head of the Bar Cadastre Office Novica Vučković.

Afterwards, ZIB continued to use the land unobstructed, but also continued building new structures on the same plot, so that today there is the total of 16 such buildings erected on the disputed plot.

Between 2008 and 2011, on several occasions ZIB put the disputed land as security for procuring loans of the total value close to 2 million euro. The first mortgage was put in October 2008 to procure a 400,000 euro worth a loan. Afterwards, in May 2005 ZIB raised another loan of 250,000 euro putting as security the same land.

ZIB took the following loan with the disputed plot used again as security in December 2009, for the amount of further 350,000 euro. The last in a row, and the largest to that, was taken in December 2010 in the amount of 900,000 euro.

All the loans were extended by the Atlas banka AD Podgorica, and all the Loan and Mortgage Agreements were signed on behalf of ZIB by Danijela Krković, Executive Manager, and on behalf of Atlas banka, by Mihailo Banjević, the Bank CEO.

The thing that is particularly dubious is that the company owned by the Mayor of Bar claimed in each case of concluding Mortgage Agreements that the lots bore no encumbrances or restrictions. Thus, all the pertinent agreements with Atlas banka describe the property subject to mortgage as land "owned by the Mortgagor, solely and exclusively, without any encumbrances or restrictions" although all pledged property had registered encumbrances.

All 275.178m<sup>2</sup> of land and 16 buildings are encumbered with restitution claims and by claims of Morsko dobro, indicating that ZIB, through its authorised representative, gave a false statement on essential features of the property mortgaged, thus misleading the Bank representatives that they enjoy full rights of title without encumbrances or restrictions over the disputed plot of land. When concluding the Mortgage Agreement, the disputed land and buildings were evaluated by expert witness to be worth 2.8 million euro.

In addition to the case described above, in 2004 ZIB attempted to register two more municipal plots, of total area over 5,000 m<sup>2</sup>, to its name. On the occasion, ZIB was rejected with the explanation they failed to accompany the given request with stipulation of legal grounds for assigning the property from the Municipality of Bar to ZIB.

br.1640 KO Novi Bar vlasništvo Opštine Bar.

2. Odbija se zahtjev AD ZIB Bar za upis prava svojine na kat.parceli br.6413/7 po kulturi neplodno zemljište površine 1860m2 i na kat.parceli br.6413/10 po kulturi neplodno zemljište površine 3184m2 iz lista nepokretnosti br.1640 KO Novi Bar vlasništvo Opštine Bar.

#### O B R A Z L O Ž E N J E

AD ZIB Bar obratio su se ovom organu zahtjevom br. 954-2706/1-03 odnosno terenskim zahtjevom br.806 za snimanje i usklađivanje postojećeg stanja na licu mjesta sa stanjem u katastar nepokretnosti.Ovaj organ je postupio po zahtjevu AD ZIB BAR izvršio snimanje svih novopodignutih objekata na zemljištu AD ZIB BAR u KO Zaljevo.

Na zemljištu označenom kao kat.parcela br.6413/1 po kulturi poslovni prostor u privredi površine 662m2 pomoćna zgrada 13m2 i dvorište 1797m2 iz lista nepokretnosti br.2271 KO Novi Bar je upisan kao nosilac prava svojine AD ZIB Bar. Za kat.parcele br.6413/7 i 6413/10 iz lista nepokretnosti br.1640 KO Novi Bar koje su u sklopu lokacije po DUP-u AD ZIB Bar su vlasništvo Opštine Bar pa je potrebno da ovom organu dostavite pravni osnov, odluku opštinskog organa, ugovor ili drugi zakonski akt za prenos prava svojine sa Opštine Bar na AD ZIB Bar.

*Excerpt from the Cadastre decison*

## Case Study 12: FADIS C-10

This case study provides a detailed explanation of the manner in which the procedure for the transfer of titles on urban buildable land was misused, and how the amendments to planning documents have doubled the benefit to the developer to the detriment of the public interest.

Building C-10, located within the Zone C of the Detailed Urban Plan "Topolica 1" within the municipality of Bar is a textbook example of the violation of laws and regulations in the area of spatial planning and construction of buildings, indicative also of how conflict of interest may influence decision-making in the area of urban planning.

The case study also points to the danger of concentrating decision-making powers within some public offices, in this case the Mayor of Bar. Thus, the holder of the public office becomes increasingly susceptible to corruption and is given the opportunity to use his position to the benefit of third parties, and the detriment of public interest.

On 15 January 2007 the Municipality of Bar concluded an agreement on the transfer of titles on urban buildable land with the company "FADIS", Bar. On behalf of "FADIS", the agreement was signed by its director, **Fahrudin Zaganjor**, and on behalf of the Municipality, the Mayor **Žarko Pavićević**.

The agreement refers to a 550 m<sup>2</sup> plot of buildable land, intended for the construction of a commercial building with a ground floor and two upper floors (G + 2), of the total Gross Floor Area (GFA) of 1,100 m<sup>2</sup>. The fee that "FADIS" paid to the Municipality on the occasion was around 360,000 euro.

**Član 1.**  
Ugovorene strane su saglasne da je Skupština opštine Bar donijela Odluku broj 030-172 kojom prenosi prava na gradskom građevinskom zemljištu po DUP-u «Topolica 1» označenom kao urbanistička parcela broj 10, u zoni „C” površine 550 m<sup>2</sup> radi izgradnje poslovnog objekta broj 10, BGP 1.110 m<sup>2</sup>, spratnosti P+2.

*An excerpt from the Agreement on Transfer of Titles over Urban Buildable Land*

On 29 January 2007, through a special agreement on payment of fees for communal infrastructure for the construction of the intended building, FADIS paid additional 173,826 euro. This agreement stipulated that the developer was obliged to complete the construction within 18 months.

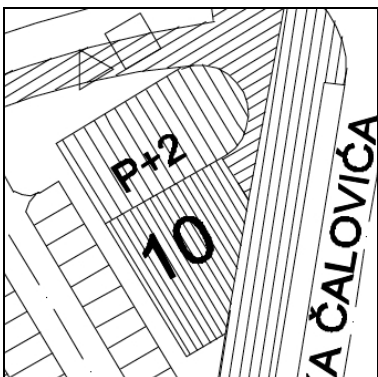
**Član 7.**  
Investitor se obavezuje da na predmetnoj parceli izgradi objekat u roku od 18 mjeseci u svemu prema UTU i odobrenoj tehničkoj dokumentaciji, da o svom trošku izvede radove na priključenju objekta na objekte komunalne infrastrukture, u svemu prema uslovima i saglasnostima dobijenim od nadležnih javnih preduzeća, kao i da o svom trošku izvrši uređenje urbanističke parcele a u skladu sa odobrenom tehničkom dokumentacijom. Nadzor nad izvođenjem radova na uređenju urbanističke parcele vršiće Sekretarijat za planiranje i uređenje prostora.

*An Excerpt from the 2007 Agreement on Communal Fees*

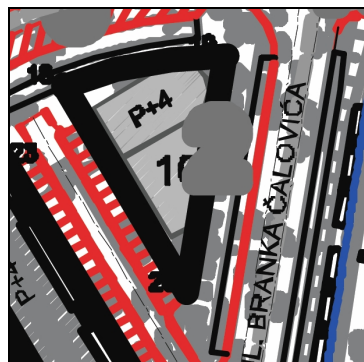
Two years after the conclusion of this agreement, FADIS had not yet completed construction that was subject to the agreement with the Municipality of Bar, until the Detailed Urban Plan (DUP) "Topolica 1" was changed, which enabled "FADIS" to build a considerably larger building.

The amendments to DUP "Topolica 1" were initiated on 22 January 2009 by the Mayor of Bar, Žarko Pavićević, while the Bar-based company "Basketing", owned by **Nebojša Milošević**, brother of former Mayor of Bijelo Polje, and now Minister of Agriculture, **Tarzan Milošević**, was entrusted with the drafting of the plan.

The existing 2005 DUP "Topolica 1" envisaged for the disputed lot the construction of a commercial building, G+2 floors. The draft DUP from March 2009, prepared by "Basketing", envisaged for the lot, at the time already owned by FADIS, a much more sizeable commercial building G+4.



An excerpt from the plan - 2005



An excerpt from the draft - March 2009

It is noteworthy that the 2009 draft plan did not envisage any new residential building in zone C.

*** ZONA "C"	
- NAMJENA	STAMBENO-POSLOVNA
- POVRŠINA ZONE	39.800,00 m <sup>2</sup>
- POVRŠINA POD OBJEKTIMA	9.050,00 m <sup>2</sup>
- BGP UKUPNA	38.800,00 m <sup>2</sup>
- BGP postojeća	34.900,00 m <sup>2</sup>
- postojeća stambena	27.550,00 m <sup>2</sup>
- prateći i poslovni sadržaji	7.350,00 m <sup>2</sup>
- BGP nova	3.900,00 m <sup>2</sup>
- nova stambena	0,00 m <sup>2</sup>
- nova prateći i poslovni prostori	3.900,00 m <sup>2</sup>
- broj novih stanova	0,0

An excerpt from the draft plan March 2009

During the public discussion concerning the amendments to the DUP "Topolica 1", there were no comments referring to C-10 building.



The comments asking for the increase in the size for C-10 arrived only after the expiry of the timeframe envisaged for the public discussion (sheduled between 10 and 25 June 2009) by **Goran Pajković**.

15.	GORAN PAJKOVIC	C-10	Traži max. spratnost u skladu sa okruznim objektima i gabarite postaviti paralelno sa ul. M.Tita i B.Calovica	Planiran je objekat spratnosti P+5
DETALJNI URBANISTICKI PLAN "TOPOLICA-I" BAR IZMJENE I DOPUNE				

*An excerpt from the Report regarding the Public Discussion of the Draft Plan*

Contrary to what then featured in the draft plan which was at the public discussion, the officials of the Municipality of Bar informed that a building of greater height, G+5, was envisaged for the lot in question. Following the public discussion, on 31 July, "FADIS" submitted comments to the draft plan, but their content is unknown, i.e. it is not known whether someone asked for any change of the building purpose.

Following the public discussion, "Basketing" drafted the plan which was eventually adopted in September 2009. In the final version, the C-10 building was envisaged as G+5 floors, while the purpose was changed from commercial into mixed commercial and residential. This has also lead to the corresponding increase in the building square footage, as illustrated in the table below.

	Old plan 2005	Draft amendments March 2009	Final plan September 2009
Purpose	Commercial	Commercial	Residential-commercial
Number of storeys	G+2	G+4	G+5
Gross Floor Area (GFA)	1.100 m <sup>2</sup>	1.850m <sup>2</sup>	2.400 m <sup>2</sup>

**Razlika u namjeni i spratnosti objekta**

\*\*\* OBJEKAT broj C-10

	<b>POSLOVNI</b>
- površina pod objektom	370,00 m <sup>2</sup>
- BGP prizemlja	370,00 m <sup>2</sup>
- ukupna BGP	1.850,00 m <sup>2</sup>
- spratnost	<b>P+4</b>
- krovovi	ravni, kosi nagiba 15°
- pokrivač	al.lim
- obrada fasade	kamen, staklo, rustika

\*\* Planirana je izgradnja novog Objekta namijenjenog poslovanju.

**Nacrt plana**

\*\*\* OBJEKAT broj C-10

	<b>POSLOVNI</b>
- površina pod objektom	400,00 m <sup>2</sup>
- BGP poslovna	800,00 m <sup>2</sup>
- BGP stambena	1.600,00 m <sup>2</sup>
- ukupna BGP	2.400,00 m <sup>2</sup>
- spratnost	<b>P+5</b>
- krovovi	ravni, kosi nagiba 15°
- pokrivač	staklo, al.lim
- obrada fasade	kamen, staklo, rustika

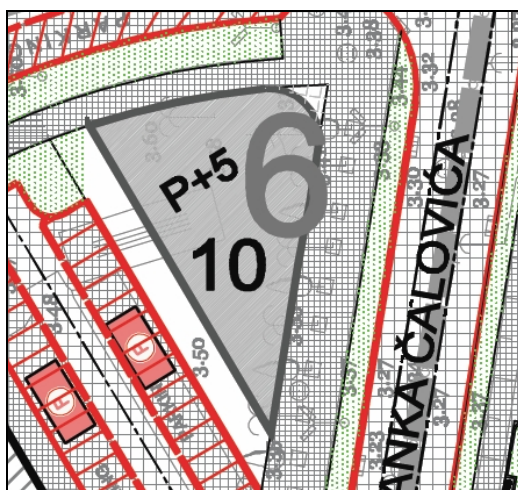
\*\* Planirana je izgradnja novog Stambeno-Poslovnog Objekta.

\*\* Prizemlje i 1-sprat su namijenjeni poslovanju a ostali spratovi stanovanju.

**Finalna verzija plana**

Thus, instead of a 1.100 m<sup>2</sup> commercial building, "FADIS" was enabled to build twice the size 2.400 m<sup>2</sup> building of mixed, residential and commercial purpose.

At the end of the day, the final version of the plan adopted at the local parliament envisaged a building of mixed use of a ground floor + additional 5 floors (G+5). Also, the final plan changed the designation of the lot number 2 where the C-10 building was envisaged into lot number 6.



*An excerpt from the graphic part of the DUP "Topolica 1 - Amendments"*

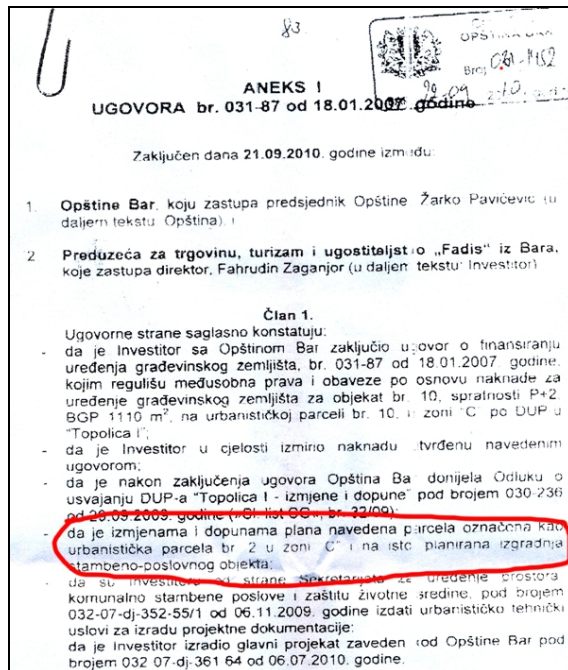
After having more than doubled the size of the envisaged building, on 21 September 2010, the Mayor of Bar, Žarko Pavićević concluded with the owner of "FADIS" the Annex to the Agreement on fees payable for communal infrastructure.

The Agreement takes note of the change to the plan, and that a building of mixed residential and commercial use is now envisaged for the lot in question, as well as that "FADIS" is obliged to pay additional fee for communal infrastructure on the account of changed GFA as compared to the originally envisaged commercial building.

Based on the difference in GFA, on the occasion "FADIS" paid to the Municipality of Bar the additional 180,000 euro roughly, and this was the only payment on the account of the increased size of the building.

In the Annex to the Agreement, the Municipality of Bar disregarded the fact that "FADIS" was in breach of Article 7 to the Agreement for failing to complete the construction, but waited for the amendments to the plan which enabled a building twice the size to be constructed.

The land that now was envisaged for a 5-storey residential and commercial building was offered in 2007 on public auction by the Municipality of Bar as a lot envisaged for a commercial building of up to two floors.



*Annex to Contract signed in September 2010*

In public auction in 2007 the disputed lot reached the price of 616 eur/m<sup>2</sup> paid by "FADIS", but the question raised here is what the price offered would be had the lot already at the time been envisaged for a building double the size of mixed use.

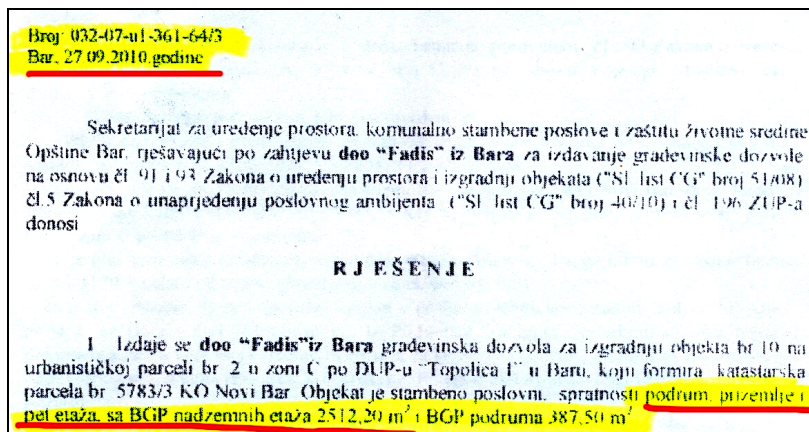
Finally, signing of the Annex to the Agreement on fee payable for communal infrastructure, was the final precondition for obtaining the building permit and commencement of construction of the C-10 building.

Soon after the adoption of the plan, the secretary of the Secretariat for Spatial Development, Bar, **Đuro Karanikić**, issued to "FADIS" the Urban and Technical Requirements (UTU) for a building of far greater height as compared to the one defined by the original Agreement with the Municipality of Bar. By an omission of the Secretariat, UTU was issued for the lot number 2, not 6.

<p><b>1. Osnovni podaci:</b>  <b>Podnosilac zahtjeva :</b> "Fadis" doo iz Bara  <b>Lokacija:</b> DUP "Topolica I" u Baru, zona C, urbanistička parcela br.2 , odnosno dio katastarske parcele br. 5873/3 KO Novi Bar, objekat br.10</p> <p><b>2. Namjena objekta:</b> stambeno poslovni objekat; prizemlje i prvi sprat su namjenjeni poslovanju , a ostali spratovi stanovanju.</p> <p><b>3. Gabarit objekta :</b>  Površina pod objektom : 400 m<sup>2</sup>  BGP poslovna : 800 m<sup>2</sup>  BGP stambena: 1600 m<sup>2</sup>  BGP ukupno: 2400 m<sup>2</sup>  <u>Spratnost: P+5 ( prizemlje i pet spratova)</u>  Preporučena spratna visina je cca 4m za poslovni i cca 3m za stambeni dio objekta, zavisno od namjene poslovnog prostora i koncepcije objekta.</p>
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*Urban and Technical Requirements issued on 06 November 2009*

The issuance of the building permit followed almost a year afterwards, on 27 September 2010. The building permit, signed by the Secretary of the Secretariat for Spatial Development, Đuro Karanikić, allowed FADIS to build a residential and commercial building B+G+5 (basement + ground floor + five floors) with the GFA of above-ground floors of 2,512.20m<sup>2</sup> and 387.50m<sup>2</sup> of basements<sup>2</sup>[5]. The building permit continues to give the wrong number of the lot.



*An excerpt from the building permit issued on 27 September 2010*

Based on this building permit, in October 2010 "FADIS" started construction, having two more companies as co-investors: DOO "IMPERIAL" and DOO "YU Lovćen". Supervision of the construction was entrusted to the Zavod za izgradnju Bara - ZIB Bar, owned by the Mayor, Žarko Pavićević. (See: *Network of Influence and Conflict of Interest*)



*Construction site board for the C-10*

The building permit issued to "FADIS" was contrary to the UTU issued, but also the very DUP "Topolica 1". Namely, the maximum allowable size of the building defined by UTU and the plan was 2,400 m<sup>2</sup> GFA, while the building permit allowed "FADIS" to build a building of total GFA of 2,512.20 m<sup>2</sup>.

<p><b>1. Osnovni podaci:</b>  <b>Podnosilac zahtjeva :</b> "Fadis"doo iz Bara  <b>Lokacija:</b> DUP "Topolica 1" u Baru, katastarske parcele br. 5873/3 KO Novi B</p> <p><b>2. Namjena objekta:</b> stambeno poslovno, a ostali spratovi stanovanju.</p> <p><b>3. Gabarit objekta :</b>  Površina pod objektom : 400 m<sup>2</sup>  BGP poslovna : 800 m<sup>2</sup>  BGP stambena: 1600 m<sup>2</sup>  BGP ukupno: 2400 m<sup>2</sup>  <u>Spratnost: P+5 ( prizemlje i pet spratova)</u>  Preporučena spratna visina je cca 4m za p namjene poslovnog prostora i koncepcije</p>	<p>Broj: 032-07-u1-361-64/3  Bar, 27.09.2010. godine</p> <p>Sekretarijat za uređenje prostora, komuna Opštine Bar, rješavajući po zahtjevu doo "Fadi na osnovu čl. 91 i 93 Zakona o uređenju prostora čl. 5 Zakona o unaprjeđenju poslovnog ambijenta donosi</p> <p style="text-align: right;"><b>R J E Š E</b></p> <p>I Izdaje se doo "Fadis" iz Bara grade urbanističkoj parceli br. 2 u zoni C po DUP-u parcela br. 5783/3 KO Novi Bar. Objekat je stan pet etaža sa BGP nadzemnih etaža 2.512,20 m<sup>2</sup></p>
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### *Difference between UTU and the building permit*

In late 2010, at the initiative of the tenants of a neighbouring building, the urban planning inspection visited the building site for C-10 and carried out checks. The report stated that the main design was not compliant with fire regulations, which makes the very building permit issued on such grounds null and void. On the account of this omission, on 22 December 2010, the inspection ordered the Secretariat for Urban Planning Bar to annul the building permit and issue a new, compliant one.

The 15-page report does not have a single word referring to the building permit being issued contrary to UTU by way of exceeding the allowable GFA. However, the works on C-10 continued, by construction of the ground floor, again contrary to the building permit issued which envisaged first the construction of the basement.

Acting as per the order of the Urban Planning Inspection, on 31 December 2010, the Secretariat for Spatial Development, Bar issued a new building permit. The new permit verified the state-of-affairs on the ground, namely the construction of a building without a basement, so that now it referred to a building of a ground floor + five floors, finally referring to the right number of the lot 6. However, the new building permit referred to a building of the total size of 2,512.20 m<sup>2</sup> GFA, although UTU allowed only for 2,400 m<sup>2</sup>.

On this account, MANS launched an initiative with the urban planning inspection asking for the annulment of the building permit thus issued.

Starting from the purchase/sale of buildable lot in the C zone of the DUP "Topolica 1", the whole process until the beginning of the construction of C-10 and afterwards was pregnant with conflicts of interest on the part of most decision-making actors.

In the first stage the Municipality of Bar, represented by the Mayor, Žarko Pavićević, sold to "FADIS" a lot covered by the above DUP with the obligation to build a commercial building G+2 within 18 months. For two years the municipality failed to monitor the implementation of the agreement with "FADIS", and instead of terminating the agreement, the relevant DUP was changed at the initiative of Žarko Pavićević, effectuating the change in the envisaged use of the building into mixed use and doubling its size.

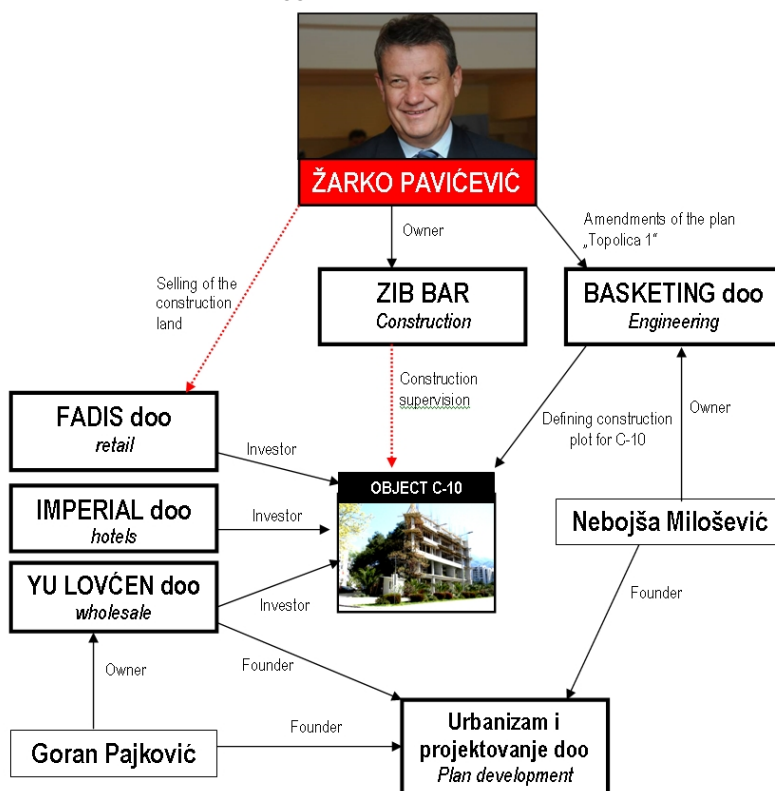


“Basketing” DOO, Bar, owned by Nebojša Milošević, brother of the Minister of Agriculture, Tarzan Milošević, the party colleague of Žarko Pavićević in the ruling Democratic Party of Socialists (DPS), was entrusted with the drafting the amendments to DUP “Topolica 1”. “Basketing” already had a history of relations with Žarko Pavićević concerning the process of planning documents development which was used to fit the multi-storey buildings illegally built by Pavićević and the persons associated with him into the new plans.

The owner of “Basketing” is directly linked with one of the investors on the C-10 building, “YU Lovćen”. Milošević, together with the owner of “YU Lovćen“, Goran Pajković, is the owner of another design bureau from Bar, called “Urbanizam i projektovanje” DOO. Goran Pajković was one of the participants to the public debate of the draft plan “Topolica 1” who asked for the increase in the building size.

After the amendments and procurement of the building permit, “FADIS” and other investors hired the company of Žarko Pavićević, Zavod za izgradnju Bara – ZIB Bar, for the tasks of expert supervision over the construction of the building C-10.

Thus, using his discretionary rights as the Mayor of Bar, Žarko Pavićević made it possible for FADIS to be in breach of the agreement with the Municipality, and initiating the amendments to the plan, he enabled this company and persons associated with it to have much bigger profit.



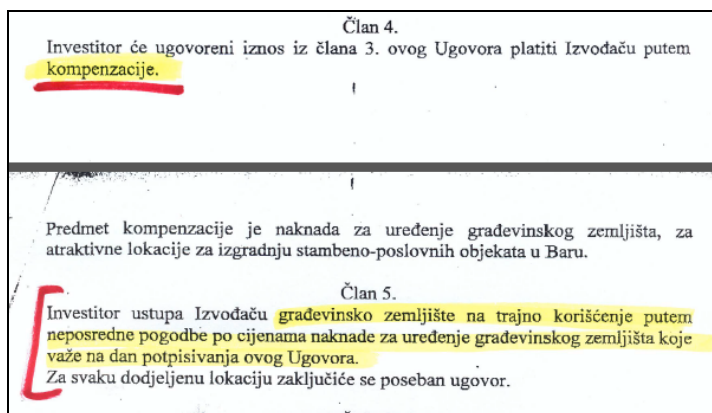
Network of influence proving the way of planning C-10



### Case Study 13: A lucrative trade-off

In April 2001 the then Mayor of Bar, **Borislav Lalević** entered into an agreement with Pavićević's company to develop a sport hall in Bar. The development timeframe was 36 months, and the estimated value of works some 5 million euro. Expert supervision over the development was entrusted to the "Basketing" company, whose owner, **Nebojša Milošević**, subsequently became one of the steady associates of Žarko Pavićević in amending the plans to endorse illegally constructed buildings within the Municipality of Bar.

Instead of monetary payment, the agreement envisaged that the Municipality of Bar would offset the value of works by granting in permanent use the attractive land in Bar downtown where the existing plans already envisaged several multi-storey buildings of mixed residential and business use.



*Excerpt from the Construction Contract*

The Buildable Land Law of the time stipulated that the transfer of titles over buildable land was to be solely done via public competition, with the exception of land transferred for the purpose of developing buildings of public interest, which certainly the mixed residential and commercial buildings ZIB intended to build were not. Notwithstanding that, the agreement was made, and ZIB started the works on the construction of the sport hall.

Precisely a year after the agreement for building the sport hall was signed, the Municipality transferred to ZIB the right to use two plots of land in the town centre, although the Construction Agreement had not elapsed at the time yet, nor had ZIB completed the works.

The agreement on transferring the title over the two buildable plots was signed on 10 April 2002 by Lalević and Pavićević, knowing that it was null and void and that buildable land may be acquired solely through public bids. The Agreement envisages the transfer of titles over two plots of buildable land of the total area of 4,460m<sup>2</sup>.

The Municipality sold the said land to ZIB for some 25 EUR/m<sup>2</sup>, or €114,000 for both downtown plots of land.

The Agreement stipulated that ZIB would develop on the said land two residential buildings of high ground floor + eight storeys (VP+8) each, of Gross Floor Area (GFA) of up to 20,480 m<sup>2</sup>. Apart from the purchase price, the Agreement also envisaged the payment of communal fees. The communal fees then calculated by the Municipality amounted to some 120 EUR/m<sup>2</sup>, or some €2.5 million. The Agreement stipulated that this amount, together with the purchase price for the land, would not be actually paid by ZIB but the whole amount would be compensated through the construction works for the Sport Hall.

1. Objekat broj 1. na urbanističkoj parceli broj 1 u zoni »Aa«  
Spratnost: Vp + 7 + 8  
Namjena: stambeno-poslovna  
- BGP – stambena: 8.880 m<sup>2</sup>  
- BGP – poslovna: 1.360 m<sup>2</sup>  
BGP ukupno: 10.240 m<sup>2</sup>

2. Objekat broj 3. na urbanističkoj parceli broj 3 u zoni »Ba«  
Spratnost: Vp + 7 + 8  
Namjena: stambeno-poslovna  
- BGP – stambena: 8.880 m<sup>2</sup>  
- BGP – poslovna: 1.360 m<sup>2</sup>  
BGP ukupno: 10.240 m<sup>2</sup>

Član 5.  
Investitor se obavezuje da na ime naknade za uređenje građevinskog zemljišta plaća Opštini iznos od 1.239.585,50 EUR-a po objektu, što ukupno iznosi 2.479.171,00 EUR-a.

*Excerpt from the Agreement on transfer*

ZIB acquired the land a year before the Construction Agreement stipulated the completion of works on the sport hall. Regretfully, the original deadline set in the agreement between ZIB and the Municipality was extended, and ZIB never finished the works. According to the information available to MANS, ZIB never bore any liability for delayed works and the ultimate failure of the whole agreement.

On the other hand, the Municipality of Bar, led by Lalević, never raised questions concerning the buildable land transferred to Pavićević despite his being in default of the agreement with the Municipality.

The sport hall remained for several years unfinished; meanwhile, however, ZIB commenced the construction of the residential buildings on its newly acquired land. The urban development project “Fleksibilna zona II” encompassing the land now owned by Pavićević, at the time of entering into agreement with the municipality envisaged the construction of two mixed residential and commercial buildings with high ground floor and eight floors (VP+8) each, which was taken as a basis for calculating the communal fees used as offset for the works on the construction of the sport hall that ZIB never completed.

The then Ministry of Spatial Development issued in April 2005 a building permit for one building, and in mid-December the same year, another. Both permits were signed by the then Minister **Boro Vučinić**, and ZIB commenced the construction works on a site several metres away from the main town market.

Meanwhile, Borisav Lalević was replaced by **Anka Vojvodić** as the head of the Bar Municipality. As for her term in office, to date MANS did not manage to procure information to confirm in any way that she ever questioned the harmful agreements on the construction of the sport hall and the transfer of titles over land concluded between Lalević and Pavićević.

In the meantime, Pavićević continued the works on his two buildings, while at the same time halting the works on the sport hall. In September 2006 Pavićević became the Mayor of Bat, as a successor to Vojvodić.

As early as in November 2006, only a month after assuming office, Pavićević passed the decision to amend the plan for "Fleksibilna zona II" covering also the disputed land with construction well underway. ZIB was entrusted with the plan drafting, thus putting Pavićević in the multiple conflict of interest situations, given that in the specific case he held the power of launching the amendments to the plan where his company held major profit interests and projects underway, awarding the same company the plan drafting.

Such conflict of interest inevitably resulted in Pavićević increasing the allowable size of his buildings, through amendments to the plan, now stipulating a ground floor + eight floors + an attic. With the plan adoption, Pavićević made it possible to add additional 1,000 m<sup>2</sup> of residential area to his buildings.

On the other hand, in March 2007, Pavićević, now in the capacity of the Mayor, concluded another agreement for the construction of the sport hall, this time with the Cetinje-based construction company "Lipa" which was supposed to finish what his company ZIB failed to do several years before.

Although the construction costs for the sport hall were already paid once by transferring valuable land to ZIB, the new agreement with "Lipa" was estimated at additional €3 million. Interestingly, the "Basketing" company was hired again as the construction supervisor, the same one that supervised Pavićević while in default of the previous construction agreement for the very same sport hall. The sport hall was ultimately finished in November 2009, eight years after signing the first construction agreement with ZIB.



Meanwhile, Pavićević completed the works on one of his two buildings and in February 2008 the Ministry for Economic Development, then responsible ministry for construction matters, issued the certificate of occupancy.

The certificate was signed by the then Minister **Branimir Gvozdenović**, the party colleague of Pavićević and current political director of DPS, and interestingly the certificate refers to a building that exceeds one floor in size the stipulations from the building permit issued in 2005. Notwithstanding a whole floor in excess, Gvozdenović

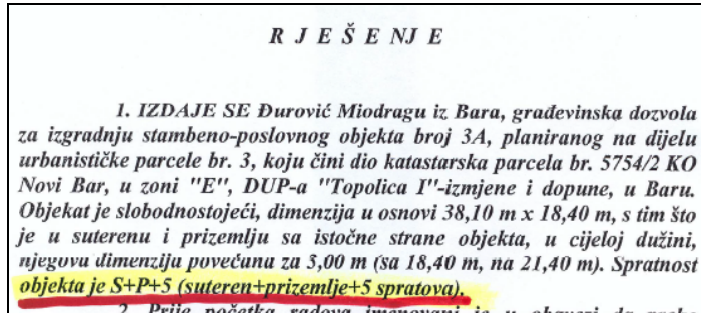
issued the certificate of occupancy referring to the building permit stipulating one storey less for the same building.

The same scenario repeated on the occasion of issuing the certificate of occupancy for the second building, again approved for occupancy with one extra floor. Once more, the certificate was signed by Minister Gvozdenović. By examining the certificates of occupancy, it becomes evident that Pavićević was never issued the so-called supplementary building permit for the extra floor built, as was the case with the building he built subsequently with **Miodrag Đurović**.

The issue raised here is whether Pavićević paid at all the communal fees for some 1000 m<sup>2</sup> of residential area added to both buildings. Given that at the time of the commencement of construction communal fees amounted to some 120 EUR/m<sup>2</sup>, a simple calculation yields the amount of at least €120,000 that possibly the local budget was deprived of referring to this deal.

## Case Study 14: Building E3A

The construction of a building in the very centre of Bar, just a dozen metres away from the main square, started in late 2007 when the line ministry issued to Miodrag Đurović a building permit designated as E3A, for a building with a basement + ground floor + 5 floors (B+G+5). The chief design was done by Zavod za izgradnju Bara - ZIB, which was also the contractor for the deal. The value of the works ZIB agreed with Đurović amounted to some €1.5 million.



Excerpt from the first construction permit



After only half a year into the development, instead of the intended five, the building reached seven storeys, as confirmed by the photos of the building site taken in June 2008. The photographs show that the rough works for a seven-storey building have been completed, implying that Đurović and Pavićević were granted a building permit for a 5-storey building, while actually doing the work on the site according to the completely new design that the competent ministry never saw, thus being in breach of the

Law on Spatial Development and Construction of Structures.

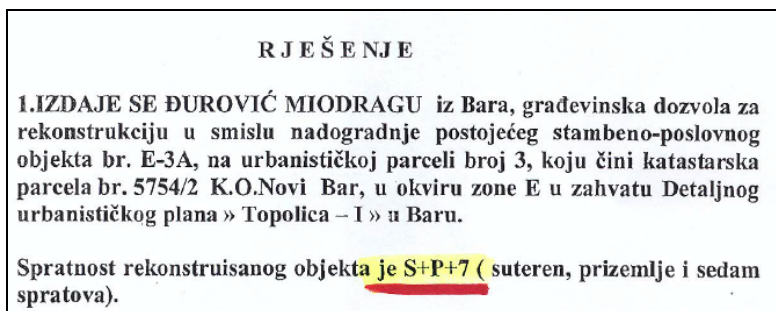
Over that year the Ministry inspected the site and noted the violation and illegal construction, the site was sealed and the decision made to demolish the storeys built in excess, which has never been executed. It is unknown why this never happened, and according to the information known to MANS, Đurović and Pavićević, the investor and the contractor, respectively, never bore any liability for violating laws and regulations.

Although the works were executed by mid 2009, the competent inspection never filed a criminal report against the investor even though illegal construction was criminalised back in mid 2008.

Following the known scenario, in early 2009, Žarko Pavićević passed the decision to amend the DUP "Topolica 1" covering the disputed building E3A. As known, the plan legalised the two additional storeys, and MANS back then drew attention to enormous conflict of interest situation for Pavićević, as the violator, on one hand, and the Mayor of Bar, on the other, legalising such violation.

In late 2009 MANS launched an initiative with the inspection services responsible for spatial protection on the grounds of a suspicion that Pavićević and Đurović failed to adhere to the terms of the 2007 building permit envisaging only a 5-storey building. On 04 January 2010, inspector Nataša Brajović responded that the works carried out were in conformity with the terms of the building permit, although the actual building on the site was 7-storey one, instead of having 5 storeys only. This gave rise to a criminal report being filed against inspector Brajović still being considered by the prosecution. All attempts made by MANS to force the ministry to act as per its own decision and perform a lawful inspection failed.

Finally, on 03 November 2010, the ministry responsible for spatial development issued a new building permit for the alleged "reconstruction in the sense of adding new floors to the existing residential and business building" and took note of the current building structure being B+G+7. The building permit, signed, instead of the minister Branimir Gvozdenović, by the secretary to the Ministry, Zoran Tomić, stated that the reconstruction works would be carried out as per the design prepared by ZIB, although the ministry knew only too well no such works would take place given that the building was already completed.



*Excerpt from the second construction permit*

The fact that the whole permit issuance procedure was fake and done for the sake of appearances of law enforcement is confirmed by the fact that only 6 days after being granted the permit, on 09 November 2010, Miodrag Đurović filed an application for certificate of occupancy. This implies that Pavićević, i.e. his company ZIB, as the contractor, managed in six days to build two additional floors to the existing building, finish the rough works, place the installations, do the joinery, and finish the facade, which is absurd.



Such a “super quick” development done by ZIB raised no suspicions with the ministry, and on 29 December 2010 Zoran Tomić signed the certificate of occupancy. That is at the same time one of the last permits issued while Branimir Gvozdenović was still in office. Early this year MANS filed a criminal report against Gvozdenović on the account of permits issued this way, but we still have no information as to what the prosecution has done in this case. In issuing the certificate of occupancy, the ministry “overlooked” several more facts indicative of suspicion that the whole procedure regarding the issuance of permits was done illegally.

The said Certificate of Occupancy states that the developer Miodrag Đurović, along with the application for certificate of occupancy filed on 09 November, and received by the Ministry on 11 November, enclosed also a technical inspection report done by the National Bureau for Urban Planning and Design - RZUP<sup>15</sup>, bearing the date of **14 December 2010**, or a month after the application was filed.

The same goes for other documents Đurović allegedly filed with the application. Thus, the receipt for paid communal fees issued by the Municipality of Bar bore the date of **19 November or 10 days after the application** for certificate of occupancy. The statement of works was issued by ZIB as the lead designer and contractor on **17 November**, again after the date of filing the application. Finally, MANS examined the receipt of the administrative fee allegedly paid by Đurović on 11 November, which actually bore the date of **21 December 2010**.

This all leads to the conclusion that in their illicit dealings Pavićević and Đurović enjoyed generous assistance from the line ministry, i.e. the Minister Branimir Gvozdenović. Starting from absolving of liability for illegal construction and sparing the building from demolition all the way to its full legalisation through fictitious issuance of the building permit and the certificate of occupancy based on forged documents, it all induces a strong suspicion that Pavićević used his personal and political ties to enable the legalisation of a seven-storey building in the Bar downtown.

MANS is still investigating how Miodrag Đurović acquired the plot of land where the disputed building was developed. The first information indicates that in 2006 this land was bought from Pavićević, i.e. ZIB, for the amount of some €350,000. Prior to that, ZIB obtained the said land by signing the agreement with Primorka Bar transferring the titles over the land to Pavićević on the grounds of due debts owed by Primorka towards ZIB. The agreement signed by the then director, Velimir Vlahović, fails to state what debt this refers to.

Interestingly, in addition to this agreement, an annex to the agreement was signed in 2004 correcting the area of land “bought” by Pavićević without any remuneration. On behalf of Primorka, this annex was signed by the then Executive Director, Andro Drecun. Until recently, Drecun was the Chief of Cabinet of Žarko Pavićević, when he assumed new office of the deputy minister in the Ministry of Sustainable Development and Tourism. Full information of how ZIB got hold of the said land will be available after MANS finishes the examination.

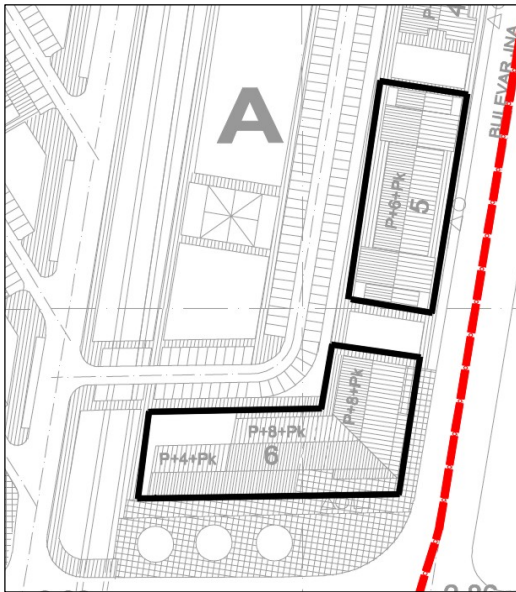
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<sup>15</sup> Owned by Aco Đukanović

## **Case Study 15: Through a plan to a larger profit**

The data available to MANS are indicative of suspicion that the Mayor of Bar Žarko Pavićević misused his office by launching the amendments to the planning documents towards a drastic increase in the number of storeys of buildings envisaged, and thus enabled the company owned by Aco Đukanović to substantially increase the value of land that was previously bought from the Municipality of Bar.

On a public competition held on 08 September 2006, the Municipality of Bar sold to the company Monte Nova D.O.O. two plots of buildable land of the total area of 4,885 m<sup>2</sup> for somewhat over 2 million euro. At the time, Aco Đukanović, brother of former prime minister, held a majority stake in Monte Nova. The agreements between the Municipality of Bar and Monte Nova were signed by Anka Vojvodić, the then Mayor, and Marija Delijević, CEO of Monte Nova.



*An excerpt from the DUP valid at the time of sale*

According to the Detailed Urban Plan (DUP) Topolica 1 valid at the time, two residential and commercial buildings were envisaged for the said plots, one of ground floor + six floors + an attic (P+6+Pk), of gross floor area (GFA) of 8,200m<sup>2</sup>, and another with P+8+Pk, of total GFA of 13,900 m<sup>2</sup>. This plan was adopted in December 2005.

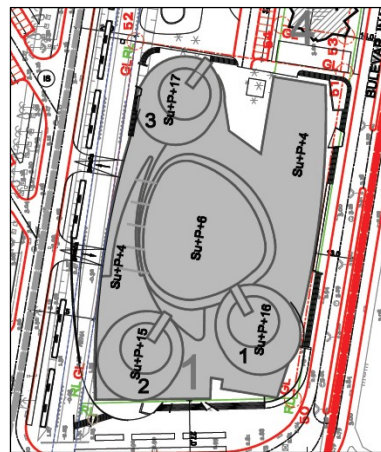
The location is very attractive, in immediate vicinity to the Port of Bar, some hundred meters away from the main administrative building and the same distance from the marina.

On the same day, on 8 September, the two agreements on payment of communal fees of total value of somewhat over 2.5 million euro was also closed. The Communal Fee Agreement was concluded for the maximum built areas envisaged by the said plan, or the total of 22,100m<sup>2</sup> GFA.

The Agreement also stipulated the developer's obligation to construct the buildings for which the fees have been paid within 36 months. Although the fees were paid in 2006, there are no data that Đukanović ever applied for the building permit as per the building sizes envisaged by the plan at the time.

In late January 2009, the amendments to DUP "Topolica 1" were launched by the decision of the Mayor of Bar, Žarko Pavićević. The task was entrusted to the company "Basketing" owned by Nebojša Milošević, a brother of a high-ranking DPS official and the current Minister of Agriculture, Tarzan Milošević. Draft amendments were put for public discussion between 10 and 25 July 2009.

In the new version of the Plan, "Basketing" introduced substantial changes in the number of floors allowable for building on plots owned by Aco Đukanović. Instead of up to six, or eight floors, respectively, envisaged by the old plan, the new draft plan featured three tower-buildings of mixed residential and commercial use of P+15, P+16 and P+17 floors.



The magnitude of the increase is well illustrated by the fact that instead of the initial 22,100 m<sup>2</sup> GFA from the time of the land sale, the company of Aco Đukanović was now made possible to build as much as 66,000 m<sup>2</sup> GFA. Translated into something more palpable, it involves some 200-250 apartments and 80 to 120 business premises, as well as a subterranean 300-lot garage.

Even if nothing is ever built, Đukanović is now in a position to make good profit from the sale of the given plots since their value has been tripled thanks to the decision of Pavićević to amend the plan. The question here is what motivated Žarko Pavićević to change the planning document.

During the public debate, there were no comments referring to Zone A of the said Plan, i.e. the location where the plots owned by Đukanović are found. Not even the written comments included any reference to the plots in question, implying that increased size was agreed behind the sense, in direct communication with the developer. The amendments to "Topolica 1" were adopted in late September 2009.

Following the Plan adoption, the Secretary for Urban Planning of the Municipality of Bar, Đuro Karanikić said that he was in "permanent communication with "Invest Nova" company who was interested in the adoption of the plan amendments". What remains unclear is whether the company only enquired about the Plan or was actively involved in the definition of solutions that significantly increased the value of the plots.

It is particularly problematic that the amendments ensued relatively quickly after the sale of municipal land to Đukanović's company at a rate far below the market prices given the current development prospects on the said plots. Đukanović paid the plots at 323 eur/m<sup>2</sup> for the plot with originally envisaged 6-storey building, and 465 eur/m<sup>2</sup> for the plot with originally envisaged 8-storey building. By way of comparison, Fadis company paid in the immediate vicinity 616 eur/m<sup>2</sup> for a plot where a 2-storey building was originally envisaged.

With the plan amendments, based on sheer increase of the land value, Đukanović earned almost the triple amount than what he paid for the plots with envisaged smaller size buildings.

Given that Đukanović never commenced the development of buildings as envisaged by the original plan, although he paid the communal fees to that, there is a concern here that the Mayor of Bar was influenced into increasing the size of buildings envisaged, and by extension, the value of the disputed plots, by amending the plan.



*Exact location of the said plots in the DUP Topolica 1*