

Implications of new legislation on management of urban areas in Montenegro

Yvonne MÜLLER, Germany

Key words: Montenegro, spatial planning , urban development, legal reform

SUMMARY

Since mid-1990-ies, Montenegro faces huge problems in urban development. Previous industrial centers decay, urban and other areas degrade while uncontrolled construction takes place outside areas determined for urban development, often occupying valuable landscapes or high quality agricultural land. In particular in the capital, the coastal area as well as in protected areas sub-urbanization and increasing amount of illegal structures can be observed.

In order to stop this development dangerous for a sustainable economic development of the country the Government of Montenegro took a series of measurements. Special attention is paid on the alignment of the national legislation with applicable regulations and practices of the European Union. Key elements of the improved legal regulations are simplification of administrative procedures, reorganization of urban and construction inspection, obligatory assessment of environmental impacts and stipulations for establishment and provision of spatial information.

The paper assesses the latest development of the Montenegrin legislation related to urban development. It conducts an evaluation of its implications, discussing the most critical points regarding the implementation of the new legislation.

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1. INTRODUCTION

Montenegro is a small, extensively mountainous country of somewhat less than 14,000 square kilometres at the Adriatic Sea. More than 50% of its population of approximately 620,000 people live in about 20% of the entire territory, namely the coastal region and the capital Podgorica, tendency increasing. Together with tourism and services, agriculture is one of the priorities of economic development of Montenegro. The nature of Montenegro, including rich biodiversity and specific landscape and cultural values recognized also by international organizations dealing with the conservation of natural and cultural heritage, represents one of its greatest treasures. More than 300km coastline, the biggest lake in the Balkans, steep canyons, numerous glacier lakes and peaks with altitude of around 2500 meters above sea level make it to an exceptional European country.



Figure 1: Map of Montenegro

Recognizing the significant natural potentials and the duty to preserve them has led to adoption of the “Declaration of Montenegro as an Ecological State” in 1991. By this Declaration, the Parliament of Montenegro committed the future development of the country to be in accordance with the principles and requirements of sustainable development. This commitment was confirmed in the Constitution, which established the right to healthy environment and the duty to protect and improve it as constitutional principle. One step to implement these principles at the operational level led to elaboration and adoption of the National Strategy of Sustainable Development of Montenegro in 2007. Analysing the problems, challenges and priority objectives of the three pillars of sustainable development it is obvious that spatial planning is a key field of activities in order to achieve goals and objectives of sustainable development in Montenegro.

2. ACTUAL SITUATION IN SPACE

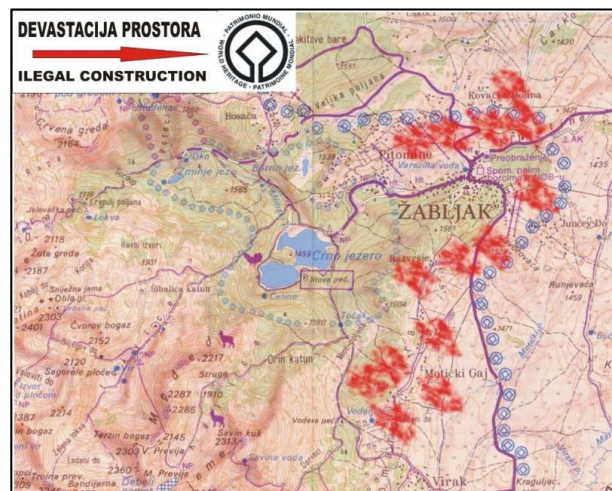
Montenegro is characterized by significant regional differences in the level of development, which are primarily manifested through the underdeveloped northern region and more

developed central and southern regions. These regional differences have certain historical roots, but have been increased tremendously between 1989 and 1995. During this period, mainly a result of the wars in the surrounding republics and the collapse of the State enterprises strong migration towards the southern part of Montenegro took place. Additionally, a lot of refugees and displaced persons from ex-Yugoslav republics took refuge in Montenegro.

Northern region, which comprises just over half of the Montenegrin territory, contributes to the national GDP with only 18% and unemployment rate is near 30% compared to an average unemployment rate of approx. 19% (Government of Montenegro, 2008). Consequently, the northern region struggles with depopulation: the number of inhabitants in the period between the 1991 and 2003 censuses dropped by 9 index points. With 19.3% poverty rate is significantly higher in comparison of the Republic average (Government of Montenegro, 2007).

On the other hand, the region has substantial resources, especially when it comes to agriculture (67% of cultivable land and 70% of the cattle) and forestry (71% of wood mass) (Government of Montenegro, 2007). The northern region also has significant potential for the development of various types of tourism, particularly those that could complement the tourist offer which is currently predominantly linked to the southern region. The southern region is at the same time the part of Montenegro with the highest population density; and is still an area to which significant number of inhabitants are moving to (the same applies to central region).

Regardless the sophisticated national strategies and plans, huge problems solving the various and complex problems can be observed in practise. Generally speaking, Montenegro is currently witnessing an irrational use of construction land. Most often, growth and development of urban and other settlements is spontaneous. A big part of the only 5.4% of the territory of more qualitative agricultural land is located in municipalities which have positive demographic growth (e.g. Podgorica, Nikšić, Bar and Ulcinj) (Government of Montenegro, 2007). In these areas a concerning tendency transforming agricultural land into construction land can be observed.



Figures 2 and 3: Illegal construction in National Park „Durmitor“: Unofficial data show that there are approximately 600 facilities with various purposes in the phase of construction (photo: NGO MOST, 2007)

Additionally, a large number of illegal constructions throughout Montenegro (particularly in larger urban centres and on the sites attractive for tourism development and recreation) neglect each plans for urban development. Primarily in the 90-ies of the previous century, due to lack of housing facilities many refugees and displaced persons as well as former employees of state enterprises, which paid for years into a housing fund getting neither apartment space nor money after collapse of the company, occupied (mostly state) land and constructed objects without licenses. Nowadays, majority of illegal construction are large housing investments made in Podgorica as the economic centre of Montenegro, at locations at the coast attractive for apartment construction for tourism purposes as well as in protected areas. A large number of apartments are intended for occasional use, while in the demographically endangered and economically peripheral areas there are even abandoned settlements.



Figure 4: “Russian Village”, illegal settlement without connection to communal infrastructure for water and wastewater, Municipality of Budva (photo private, 2008)

Following the demand there are huge regional differences in housing prices, with prices in Podgorica and at the coast significantly exceeding the prices in other regions and big annual increase of prices (e.g. between 2004 and 2007 prices for real estate increased approx. 96% in the coastal towns (CEED, 2007)).

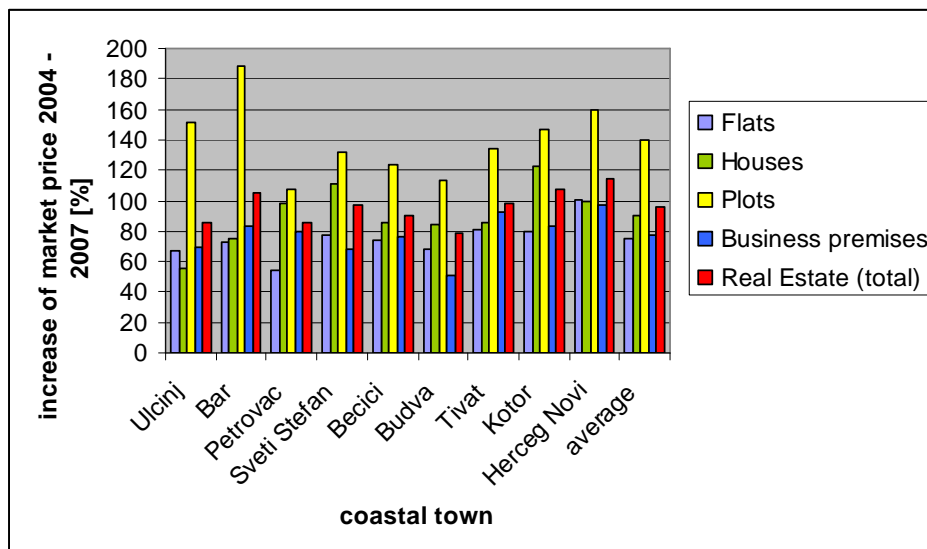


Figure 5: Development of market price of real estate in the coastal region of Montenegro between 2004 and 2007 (data source: CEED, 2007)

The resulting scattered construction often exceeds thresholds for economic provision of communal and other services and creates additional pressure on the natural resources and the

environment, particularly regarding water pollution. Public interest is often neglected or ignored.

The prescribed negative development trends in space are caused by several shortcomings of the system of planning, adopting and implementing plans in Montenegro:

- Outdated planning documents for most of the areas based on obsolete economic conditions and social assumptions
- Insufficient coverage of regulatory plans
- Insufficient connection and coordination of space management on state level with the one on local level
- Lack of capacity (financially and personally) in planning authorities and planning companies for the development of the required planning documentation
- Lack of appropriate basis data for planning, in particular up-to-date data on physical structures and ownership rights
- Little developed sense of other line ministries, institutions etc. for importance to incorporate their sector plans in the spatial / urban planning process
- Long and expensive administrative procedures
- Huge deficiencies in the enforcement system (slow work of urban, construction and communal inspection, inconsequent fine policy, very slow court procedures)

3. SPATIAL PLANNING DOCUMENTATION IN MONTENEGRO

Spatial planning system in Montenegro is based on a hierarchy of plans and is realized on two levels, state and local. National Spatial Plan is the plan of highest importance, through Spatial Plans for Special Purpose Areas (such as national parks and the coastal zone) and Municipal Spatial Plans down to General and Detailed Urban Plans. According the new legislation, planning hierarchy will be flattened by replacing Municipal Spatial Plans and General Urban Plans by Spatial-Urban Development Plan of the Municipality.

The first Spatial Plan of the Republic of Montenegro from 1984 obliged the municipalities to enact spatial and regulatory plans for their territory. Hence, for the most Montenegrin towns spatial planning documentation has been elaborated until end of the 80-ies of the previous century (16 of the 21 Montenegrin municipalities did elaborate spatial plans for the whole territory of the municipality; except one municipality, General Urban Plans (GUP's) are elaborated for all municipal centres; for a certain number of sub-municipal centres general and / or regulative plans have been elaborated).

Due to economic and demographic changes during the 90-ies of the last century, all these planning documents lacked extensive implementation.

At the beginning of 2008 the new Spatial Plan of Montenegro until 2020 has been adopted. In order to stop uncontrolled urban development and support further economic development, the Government of Montenegro strongly fosters its implementation. At state level, elaboration of

more than 60 Studies of Locations (regulating possible construction in development zones in special purpose areas defined by the corresponding Spatial Plan for Special Purpose Area) in the coastal area have been started. Several Studies of Locations in National Parks are near completion. Spatial Plans for Special Purpose Areas as well as Detailed Spatial Plans are under revision and elaboration. Municipalities are given a legal deadline until end of 2009 to harmonize their Spatial Plans with the Spatial Plan of the Republic.

		area [km ²]*	Population density [1/km ²]*	settlements [ha]**			Municipal Spatial Plan (SP)**	General Urban Plan (GUP)**		regulatory plans (estimation)		
				urban	rural	total		[ha]	GUP/SP [%]	[ha]	[% of GUP]	
Coastal Region	1	Ulcinj	255	79.6	9,021	368	9,389	☑	9,021	35.4	1,020	11.3
	2	Bar	598	67.0	6,225	507	6,732		6,225	10.4	1,140	18.3
	3	Budva	122	130.4	4,406	134	4,540	☑	4,406	36.1	12,170	276.2
	4	Kotor	335	68.5	1,800	267	2,067	☑	1,800	5.4	1,190	66.1
	5	Tivat	46	296.3	3,740	174	3,914	☑	3,740	81.3	600	16.0
	6	Herceg Novi	235	140.6	7,763	452	8,215	☑	7,763	33.0	95	1.2
		1,591	130.4	32,955	1,902	34,857		32,955	20.7	16,215	49.2	
Central Region	7	Podgorica	1,441	117.4	8,446	1,400	9,846	☑	8,446	5.9	3,380	40.0
	8	Cetinje	910	20.3	1,587	458	2,045	☑	1,587	1.7	430	27.1
	9	Danilovgrad	501	33.0	735	579	1,314	☑	735	1.5	150	20.4
	10	Nikšić	2,065	36.5	5,600	858	6,458	☑	5,600	2.7	640	11.4
		4,917	51.8	16,368	3,295	19,663		16,368	3.3	4,600	28.1	
Northern Region	11	Kolasin	897	11.1	924	741	1,665	☑	924	1.0	120	13.0
	12	Mojkovac	367	27.4	445	441	886		445	1.2	590	132.6
	13	Plav	486	28.4	442	608	1,050	☑	442	0.9	340	76.9
	14	Andrijevica	283	20.4	181	491	672		181	0.6	20	11.0
	15	Berane	717	48.9	1,280	1,690	2,970	☑	1,280	1.8	195	15.2
	16	Rozaje	432	52.5	594	673	1,267	☑	594	1.4	380	64.0
	17	Bijelo Polje	924	54.4	9,500	2,144	11,644	☑	9,500	10.3	480	5.1
	18	Pljevlja	1,346	26.6	1,177	1,289	2,466	☑	1,177	0.9	140	11.9
	19	Zabljak	445	9.4	2,040	373	2,413	☑	2,040	4.6	90	4.4
	20	Pluzine	854	5.0	330	330	660	☑	330	0.4	60	18.2
	21	Savnik	553	5.3	109	386	495		109	0.0	no data	
		7,304	26.3	17,022	9,166	26,188		17,022	2.3	2,415	14.2	
Total		13,812	69.5	66,345	14,363	80,708		66,345	4.8	23,230	35.0	

*: Government of Montenegro, Ministry of Finance, Republican Statistical Office MONSTAT, 2003, Census of population, households and dwellings in the Republic of Montenegro in 2003.

** : Government of Montenegro, 2008, Spatial Plan of Montenegro until 2020.

Table 1: Area, population and coverage with spatial and urban plans according regions and municipalities

Although the current National Spatial Plan undoubtedly has certain shortcomings, e.g. regarding the energy sector, after almost two decades of basically no planning activity in Montenegro it finally provides a base for further spatial and urban planning of the state and the municipalities. Even before finalization of the National Spatial Plan and harmonization of the municipal Spatial Plans most municipalities started to up-date and amend their existing planning documentation for priority areas.

After adoption of the National Spatial Plan an intensive process of elaboration and amendment of spatial and regulative plans at both, state and local level, did start. Today, for minimum 35% of the settled area regulatory plans are adopted¹. It is evident that due to the

¹ More detailed figures are very hard to be obtained, since basically all municipalities are working on elaboration of new regulatory plans which are currently at different state of finalization and situation changes almost weekly. Presumably, the real percentage of adopted plans is already significantly higher.

better economic preconditions, in the more developed coastal region approx. 50% of the settled area is regulated with urban plans, while in the less developed northern region it is about 15% only.

A particular need is elaboration of Studies of Location in protected areas, e.g. national parks, since in line with national strategies for a sustainable development of the country particular attention has to be paid to use and protection of rural areas and areas that have special protection status.

4. REFORM OF THE PLANNING SYSTEM

As analysed in chapter 2, outdated planning documents and insufficient coverage of regulatory plans are only some of the aspects leading to today's concerning situation of spatial development in Montenegro. Thus, implementation of the National Spatial Plan by subsequent planning documentation alone would not be sufficient to effectively prevent negative development trends in space in future.



Figure 6: Illegal waste disposal on the way to an eco village in National Park "Durmitor"



Figure 7: Logging in National Park "Durmitor"

In order to improve the quality of planning and strengthen the implementation of plans the Government of Montenegro conducted a reform of the planning system which took place in two steps:

1. In May 2005 a new Law on Planning and Spatial Development has been adopted. It introduced participatory elements in the process of drafting, adoption and implementation of plans. Also, it envisaged mandatory strategic environmental and environmental impact assessments (SEA and EIA) of the plans. The corresponding Law on Strategic Environmental Assessment entered into force on 1st January 2008. It defines, based on the EU-Directive on Strategic Environmental Assessment, the conditions, methods and procedures of execution of assessment of impacts of certain plans or programmes on the environment.

2. In July 2008 the Law on Spatial Development and Construction of Structures has been adopted, combining the regulations on spatial planning and construction previously regulated by the Law on Planning and Spatial Development and the Law on Construction. Amongst other changes, the new law redefines the hierarchy of plans (Municipal Spatial Plan and General Urban Plan are replaced by the Spatial-Urban Development Plan), defines the obligation of the body adopting a plan to create all conditions for its implementation i.e. communal infrastructure, and introduces certain simplification of the process of obtaining building permits and start construction. A particular important amendment with big implications in administrative structure and processes are regulations related to strengthen urban and construction inspection and enforcement of implementation of planning documentation.

There is already adequate experience with application of the instruments introduced by the Law on Planning and Spatial Development in 2005. The new Law on Planning and Spatial Development got into force in September 2008, in parts even in January 2009 only. Also, some important supplementary regulations are still under elaboration, e.g. on detailed content and elements of urban planning documentation. Hence, its implications on urban development in Montenegro can not yet fully been assessed. Nevertheless, certain aspects can be already discussed regarding their possible implications.

The elements of major importance on urban development shall be discussed in the following paragraphs. Additionally to above mentioned legal changes, the Government of Montenegro does initiate a number of measures related to improved accessibility and use of digital spatial data. Efficient use of qualitative data on space is a prerequisite for modern planning and decision making processes, but shall be not subject of this paper.

a) Public debate and obtaining opinion of sector ministries and institutions

As proofed in many other countries before, these participatory elements introduced in 2005 have a positive impact on the quality of planning documentation which can not be underestimated.

Still, it has to be stated that while interest and participation of citizens is satisfactory, submission of opinion of sector ministries and other relevant institutions is generally rather poor with the effect that particular sector planning is often not considered in elaboration of spatial or urban plans. In this aspect, there is a clear need of further sensibilisation and strengthening of procedures.

b) Implementation of the Law on Strategic Environmental Assessment

For all plans which elaboration did start after 1st January 2008, carrying out a Strategic Environmental Assessment is obligatory. In general it has to be stated that the elaboration of qualitative Environmental Reports is tremendously hampered by inappropriate conditions at the national level. Beside obvious, but partially understandable lacks regarding interpretation of the law (e.g. related to possible impacts on particular items, definition of environmental protection objectives and indicators etc.) due to lack of experience in Montenegro, the principal critical element is the policy that the same company, elaborating the plan, can (and as a rule does) elaborate the Environmental Report. This fact turns the purpose of the Environmental Report from an assessment of a planning document into a justification of the same. Even if by law different employees do carry out the work, assessment of already

submitted Environmental Reports affirms that it is not possible to elaborate a planning document and at the same time elaborate and assess objectively its environmental impacts (GTZ, 2008).

c) Higher responsibility of authorities and individuals involved in planning and construction

The law determines a higher and more severe responsibility of all participants in the process of spatial development and building construction. At the same time, the new legal regulation significantly changes competencies of bodies performing inspection control and precisely defines division of competencies. Also, the law anticipates significantly more severe penalty policy with a broader range of offences as construction without building permit, contrary to the building permit and technical documentation as well as illegal connection of the construction site.

The law also put more responsibilities from the national to the local level. For instance, so far building permits for special purpose areas and objects with more than 1000 m² in other areas were issued by the Ministry. The new law keeps the responsibility for issuing building permits in areas of special purpose within the Ministry, but increases the limit for other objects to 3000 m². As a consequence, the Ministry is significantly released. Freed capacities could be dedicated to more strategic tasks. On the other hand, having in mind the tense situation regarding professional personal, many local planning authorities will have serious difficulties to cope with their extended responsibilities.

d) Urban and construction inspection

Part of the work on inspection supervision in the field of spatial protection has been entrusted to the Capital Podgorica in order to increase number of persons participating in the work and thus to contribute to prevent further devastation of the space by illegal construction (Government of Montenegro, 2008d). Yet, despite the alleged good intention of the Ministry, this regulation caused the direct opposite effect since the Degree did generate a unlegislated period of three month between annulling the responsibility of the state inspection supervision for this type of work by end of September 2008, but establishing a corresponding unit within administration of the Capital Podgorica by January 2009 only. Basically every owner of real estate in the territory of Podgorica did use that in order to add additional construction or to start new construction, trusting that once built, the construction will be legalized later on.

The first months of 2009 will show, if entrusting inspection monitoring on other authorities will contribute to a better enforcement of penalties and significant impact on stopping illegal construction. The Ministry already plans to initiate the same entrustment not only for other bodies of state and local administration, but also for other legal entities such as public enterprises for coastal zone and National Parks. In principle, this initiative is supportable. But the experience in the case of Podgorica clearly demonstrates the need for a more coordinated approach.

e) Registration of illegal constructions in the Real Estate Cadastre

One of the important novelties is that only a building for which a building permit was issued can be entered into the Real Estate Cadastre (Article 67). This regulation is intended to achieve a higher level of prevention of illegal construction, but at least currently its positive

implication is highly questionable. The legal obligation to register all structures in the Real Estate Cadastre exists already since more than 10 years. Despite, in practise an entry into the Real Estate Cadastre is usually only applied, when there is an imperative for it, e.g. sale of the real estate or getting a mortgage. Thus, any intended positive impact of the new regulation depends on a consequent enforcement system. The regulation itself definitively does not improve the situation regarding illegal construction. Even contrary, since the new regulations on strengthening urban and construction inspection still need to prove their impact, it is likely that the stipulation will cause additional and unnecessary difficulties for the process of elaboration of planning documentation. So far, also illegal construction or structures without permit for use could be registered in the Real Estate Cadastre (with a special note in the register) and thus via the cadastral map available for planning.

5. CONCLUSIONS

The assessment above concludes that the introduced new legislation regarding urban planning in Montenegro, in general, would be appropriate to improve the management of urban areas significantly. But mandatory precondition for any significant improvement is its systematic and consequent implementation. Previous experience shows, that in particular the enforcement system is the weakest point of the system related to urban development in Montenegro. With adopting the new legal regulations on planning the Government of Montenegro did set clear political signs. Their implementation in practice in the next months will show if the political will for the outlined changes is strong enough to withstand the strong influence of certain private interest groups.

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BIOGRAPHICAL NOTES

Graduated engineer of geodesy, the author gained working experience in State Survey Administration in Germany and obtained degree of Master of Science (GIS) in Austria.

Since 5 years the author works in projects related to land management of the German Technical Cooperation (GTZ) in South East Europe. Currently, she is leading a project on municipal land management in Montenegro.

CONTACTS

Yvonne Müller
Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH
Belvederska 5
20000 Podgorica
MONTENEGRO

Tel. + 382 (0) 20 208 295
Fax + 382 (0) 20 208 296
Email: yvonne.mueller@gtz.de
Web site: www.gtz.de