CENTER FOR MONITORING AND RESEARCH

Report on administrative procedures in the field of spatial development and construction

2013/2014

Publisher:
Center for Monitoring and Research CeMI
Bul. Josipa Broza 23a
81 000 Podgorica
e-mail: cemi@t-com.me
www.cemi.org.me

For the publisher:
mr Zlatko Vujovic

Authors:
mr Milorad Markovic
mr Vlado Dedovic

Translator:
Bilsana Bibic

Creation of this Report was supported by the Royal Norwegian Embassy

Napomena:
Izrečeni stavovi pripadaju isključivo autorima i saradnicima i ne predstavljaju nužno zvaničan stav Ambasade Kraljevine Norveške.

Disclaimer:
The views herein expressed are solely those of the author and contributors and do not necessarily reflect the official position of the Royal Norwegian Embassy.

CeMI
CENTAR ZA MONITORING I ISTRAŽIVANJE

NORWEGIAN EMBASSY

Contents

INTRODUCTION 4

1. *Legal framework* 6

1.1 International standards 6

1.2. National legislation 11

1.2.1. The Law on General Administrative Procedure 11

1.2.2. The Law on Spatial Development and Construction of Structures 12

1.2.3. The Law on Inspection Control 13

2. *The methodological approach to monitoring of administrative procedures* 15

2.1. The principles of work of the research team 15

1. The principle of not interfering in the proceedings 17

2.2. The research team 18

2.3. Techniques of monitoring of administrative procedures 18

2.4. The sample of monitored cases 18

3. *Meeting the deadlines for decision-making in the first instance administrative procedures issuing construction permits* 22

4. *The right to a public announcement of the decision* 26

5. Reasoning of decisions in the first instance administrative procedures issuing construction permits 30

6. *The Right of Appeal* 33

7. *The analysis of conduct of inspections in the field of urban development and construction of structures* 35

7.1. Inspection in the field of spatial development 35

7.1.1. Urban inspection 36

7.1.2. Inspection for spatial protection 38

7.2. Inspection in the field construction of structures 39

8. Analysis of the procedures before the Administrative Court 43

a. The procedures in the area of economic development 43

b. The procedures in the area of inspection 44

c. The procedures in the area of local government 47

CONCLUSIONS AND RECOMMENDATIONS 54

INTRODUCTION

The Center for monitoring and research (CeMI) began the implementation of the project "Monitoring the administrative procedures in field of spatial planning and construction" with the support of the Embassy of Norway, in mid 2013. The aim of the project was to contribute to improving transparency, accountability and efficiency and reducing the scope for corruption in the implementation of administrative procedures in field of spatial planning and construction in Montenegro. The project relies, in methodology and organization, on the established methods of CeMI, developed through a seven-year project "Monitoring of trials" in cooperation with the OSCE Mission to Montenegro.

Spatial development and construction is one of the areas in which intensive legislative and institutional reforms were carried out in the past. The reforms were intended to eliminate problems in the implementation of the legal framework that led to violation of the law, increasing the scope for corruption and creating an atmosphere of systematic insecurity. For these reasons, it was necessary to create a project that aimed to identify key issues and recommend models for addressing them, through the intensive monitoring of compliance both national legislation and international standars on the side of institutions and individuals. Of course, projects of this type must be carried out if the effects of policy proposals are to be monitored. Therefore, CeMI will continue monitoring administrative procedures in field of spatial development and construction with the intention of improving the monitoring methodological and organizational activities in a larger number of Montenegrin municipalities.

CeMI has provided institutional support for this project by signing a Memorandum of cooperation with almost all the institutions involved in the implementation of actions in the field of spatial planning and construction. The signing of the Memorandum of cooperation with the Ministry of Sustainable Development and Tourism, Directorate for Inspection Affairs, Municipality of Budva, Ulcinj Municipality and the Municipality of Zabljak, marked a significant step in ensuring the sustainability of the project results, since they would be aimed at strengthening the role of institutions in ensuring an adequate system of control and accountability in conducting procedures in the field of spatial planning and construction in Montenegro. Also, the project provides the basis for further institutional support for administrative procedural monitoring in all municipalities in Montenegro. It should be noted that CeMI was well received in the municipalities of Budva, Ulcinj, and Zabljak, as were all other institutions, in the implementation of project activities and communication, in accordance with the provisions of the signed Memorandum of cooperation.

This report before you is, in accordance with the OSCE methodology used in all phases of the project, a systematic collection of observations that observers noted during the monitoring of procedures conducted by the competent authorities in the municipalities of Budva, Ulcinj, and Zabljak, as well as before the Ministry of Sustainable Development and Tourism, Directorate for Inspection and Administrative Court of Montenegro. The report consists of eight parts: International standards and national legislation on the right to a fair trial and the right on good administration; the methodological approach to monitoring administrative procedures; analysis of meeting deadlines for decision-making in the first instance administrative procedures for issuing building permits; analysis of the right to a public announcement of the decision; reasoning of decisions in the first instance administrative procedures for issuing building permits; right of appeal; the treatment of inspections in the field of spatial planning and construction and analysis procedures before the Administrative Court. Finally, the last part of the report provides the conclusions and recommendations in relation to the findings presented in the report.

1. *Legal framework*

1.1 International standards

The subject of the Report is monitoring of administrative procedures and in its first part introduces us to international standards of two legal concepts - the right to a fair trial and the right to good governance, which in terms of subject matter, should be treated as a whole. As a whole, these two principles have been recognized in recent years in Europe, through the common approach of the analysis of administrative justice - a basic requirement of a society based on the rule of law that constrains public administration and its administration to act within their lawful powers.

Standards governing a **fair trial** are contained in numerous international documents, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms. Article 10 of the **Universal Declaration of Human Rights**[1], adopted by the General Assembly of the United Nations, provides that: *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him*. According to Article 14 paragraph 1 of the **International Covenant on Civil and Political Rights**, *all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*. The most important international legal standard of a fair trial is contained in Article 6 of the **European Convention on Human Rights and Fundamental Freedoms** (hereinafter: the European Convention) which, among other things, guarantees that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The right to a fair trial applies to criminal as well as civil, administrative, and other procedures. The first paragraph of Article 6 applies equally to both categories of procedures, while paragraphs 2 and 3 are applied only to criminal proceedings. The jurisprudence of the European Court of Human Rights (hereinafter: the European Court) led to the creation of new guarantees that are not mentioned in the text of Article 6, but were developed through jurisprudence.

[1] The Universal Declaration of Human Rights, December, 1948 General Assembly resolution. 217A (III), Yu.N. A/810. As customary international law, the Universal Declaration is a source of obligation of states to respect the right to a fair trial.

Standards relating to good governance, which establish the principles of administrative agencies in carrying out administrative activities, are contained in the documents of international organizations. These documents continuously enhanced in order to implement the basic principles on which should be based good governance: transparency, accessibility and efficiency. Pursuant to Article 41 of the **Charter of Fundamental Rights of the European Union**, every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. In this way, the concept of the right to good governance[2] is introduced into the legal order of the European Union, in particular that every person has the right to be heard in any individual measure which would affect him or her adversely and the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy with a mandatory obligation of the administration to give reasons for its decisions. The right to good governance is further developed through **the European Code of Good Administrative Behavior** (2001), which is one of the main mechanisms for the practical implementation of the right to good governance. The Code contains the basic principles that should guide officials of the European Union. The basic principles of the Code, which contribute to improving the quality of public administration, strengthening the rule of law at the EU level and reducing the possibility of discretionary power been arbitrarily applied, include:

- **Commitment to the European Union and its citizens**, according to which officials should be aware that the EU institutions are there to serve the interests of the Union and its citizens. Officers should carry out its functions as best they can and try to meet the highest professional standards in every moment. They should ensure a high level of behavior since they are in positions that deserve public trust. Thus, they should set a good example for others;
- **Principle of integrity**, which provides that the officials should be guided by a sense of appropriateness, and to behave at all times in a manner which will be positively evaluated by the public. Officials should not take on financial or other obligations that could affect their enforcement functions, which includes to the acceptance of

[2] "The right on good administration has been developed in the past few decades as a result of changes in approach relating citizens and authorities/government and as a reflection of contemporary trends notion of public (state) administration as a service to the citizens, not the instrument of government, while respecting the democratic principles of political organization. In this sense, the power belongs to the people - they define it, delegate and finance and therefore citizens rightly expect that it is done on their behalf, that is, to be good. The right on good governance appears as set of standards of administrative agencies in carrying out administrative activities of the development of democratic values at the national level, and through international organizations, constantly builds towards greater participation, transparency, accessibility and efficiency of the administration, with the maximum respect for human dignity. Principles of good governance have been developed with the aim to find out what all the administration, which is in the most direct relationship with citizens, must do, or not do, in order to the citizens experience it as their service. See more: "*The Ombudsman, the recommendations in practice*", the Lawyers Committee for Human Rights, Belgrade, 2012.

gifts. Officials should take steps to avoid conflicts of interests. They should take immediate steps to resolve any conflicts that occur. This obligation exists even after leaving their workplace;

- **The principle of objectivity** requires that officials be impartial and be guided by evidence and willing to listen to different opinions. They should be ready to recognize and correct any error. Officials are obliged to refrain from acts which would lead to discrimination and should not allow the fact that they like or dislike a person to influence their professional conduct;
- **The principle of respect for others**, which stipulates that officials should treat each other and citizens with respect. They should be polite and helpful, accurate and cooperative;
- **The principle of transparency**, according to which officials should be prepared to explain and justify their actions. They need to keep proper records and readily accept an assessment of their behavior by the public, which refers to their adherence to the principles of public service.

The Committee of Ministers of the Council of Europe 2007 adopted **Recommendation Rec (2007) 7 on good administration**[3]. This document sets out the principles that public authorities should apply in their dealings with citizens, in order to build good governance. The Recommendation includes the following principles:

a. **The principle of legality** - administrative procedures must be implemented by public authorities acting in accordance with the law and not implemented through arbitrary measures, even in the exercise of discretion; authorities must act in accordance with national law, international law and the general principles governing the organization, operation and activities of the public administration; authorities must comply with the rules and legal norms that define its powers and procedures; exercise their powers only for the purposes for which they have been entrusted, without abuses that would lead to the violation of the law and legal system.
b. **The principle of equality**, requires public administration to: treat legal entities equally and not differentiate between subjects in the proceedings on the grounds of gender, ethnic origin, religion or any other basis or belief;
c. **The principle of impartiality**, which means that public authorities and public officials act fairly, regardless of their personal beliefs and interests, taking into account the legality of work and application of legal principles in respect of all relevant matters.

[3] The Committee of Ministers of the Council of Europe Committee of Ministers to member states CM / Rec (2007) on good administration 2007. https://wcd.coe.int/ViewDoc.jsp?id=1155877&Site=CM

d. **The principle of proportionality**, according to which the organs of public administration: take measures affecting the rights or interests of the entities in the procedure only when necessary and only for purposes necessary to meet the desired objective; in the exercise of its discretion maintain an appropriate balance between any unwanted effects that their decisions have on the rights and interests of subjects in the process and purpose which is to be achieved. All the measures taken must not be excessive;
e. **The principle of legal security**, requires public authorities not to take retroactive action, except in legally justified circumstances, and will not be included in acquired rights and the final legal situation, except in cases where it is necessary in the name of public interest;
f. **The principle of decision making within a reasonable time**, which obliges that public authorities exercise their powers and carry out activities of procedures within a reasonable time;
g. **The principle of participation**, pursuant to which public authorities provide the possibility of legal entities to participate in the preparation and implementation of administrative decisions that affect their rights and interests;
h. **The principle of respect for privacy** requires public authorities to respect the privacy of the parties, particularly when processing personal data, and take all measures to guarantee the privacy of in proceedings when authorized to process personal data and documents, especially in electronic data processing. According to this principle, public authorities shall apply the rules relating to the protection of personal data, particularly when it comes to the right to access personal data and security updates or removal of data that is incorrectly interpreted or not interpreted;
i. **The principle of transparency** obliges public authorities to respect confidential information when exercise their powers and to provide legal subjects with information about the authorities actions and decisions including the publication of official documents and, in addition, provide a right of access to official documents in accordance with the rules relating to the protection of personal data.

Recommendation Rec (2007) 7 on good administration includes the principles that govern decisions in administrative proceedings, and decisions dealing with the rights, obligations and interests of individuals and legal entities, so-called regulatory decisions, that is acts of administration which establish general rules and apply to an indefinite number of persons. Pursuant to the provisions of the recommendation, authorities bring administrative decisions, or on its own initiative or on the initiative of the legal entity (natural or legal) person. Decisions made in response to the initiatives of legal subjects must be made at reasonable intervals, which are defined by law. The recommendation

provides that the law has to foresee remedies for review of decisions of administrative bodies. In cases where the initiative for making administrative decisions is submitted to a public administration that is not in charge of its resolution, the administrative authority will forward the request to the competent authority where possible or advise the initiator to do so. The demands of public initiatives for the adoption of decisions by public administration must notify the applicant of the expected time in which a decision will be made, as well as the remedies that exist if no decision is made. Pursuant to the provisions of the Recommendation, if the costs of decision-making are borne by legal subjects, they must be fair and reasonable. Administrative decisions must be formulated in a simple, clear and understandable manner, and that every decision must contain adequate justification, stating the legal facts and circumstances that justify the basis on which the decision is made, with mandatory listing terms for appeal. The persons referred to in the individual decision must be personally notified, except in exceptional circumstances where only public announcement of decisions is possible. Administrative authorities are responsible for the enforcement of administrative decisions that fall within their jurisdiction. The system of administrative or criminal penalties must be established to ensure the conduct of private persons in accordance with the decisions of the administration. According to the Recommendation, the authorities are obliged to allow legal entities reasonable time for fulfillment of obligations, except in emergencies when they are obliged to give reasons for departing from the general principles. Forced execution by a public authorities decision must be explicitly prescribed by law. The legal entities referred to in the decisions execution must be informed about the procedure and the reasons of the execution. Measures of compulsory decisions execution must be proportional to the purpose that they achieve.

Also, as a source of soft law, there may be mentioned the recommendations contained in documents of the Organization for Security and Co-operation (OSCE). Recommendations relating to good administration can be found in the document of the meeting of member states of the OSCE in Copenhagen in 1990[4], and Document of the meeting of member states of the OSCE in Moscow 1991[5].

[4] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, June 5 to 29 in 1990, available at: http://www.osce.org/odihr/elections/14304

[5] Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, September 10 - October 4 in 1991, avaliable at: http://www.osce.org/odihr/elections/14310

1.2. National legislation

1.2.1. The Law on General Administrative Procedure[6]

The Law on General Administrative Procedure regulates the conduct of the state authorities and local authorities when deciding in administrative proceedings on the rights, obligations or legal interests of natural persons, legal persons or other parties and while performing other tasks, as well as treatment institutions and other legal entities which deal with administrative matters within the public authority. The law stipulates the basic principles according to which administrative procedures are to be implemented, namely: **the principle of legality**, which provides the obligation for of state authorities, local authorities and institutions and other legal entities which act in administrative matters, to decide in accordance with the Law and regulations, and in situations where the authority is authorized to decide at its discretion, a decision must be made in the limits of authority and in accordance with the purpose for which the authorization is given; **the principle of protection of the rights of citizens and protection of the public interest** provides the obligation of the parties to ensure that they easily able to protect and achieve their rights and legal interests, taking into account that the realization of their rights and legal interests is not at the expense of the rights and legal interests of other persons, or contrary to the public interest established by law. This principle provides for the obligation of the authorized person that, when he finds that a party or participant in the process has the basis for the realization of a right or legal interest, to inform them of it. Also, this principle stipulates that the parties apply the rules that are favorable to them if that achieves the main goal of the Law; **the principle of efficiency** obliges the administrative organs, when dealing with the case and deciding on administrative matters, to provide efficient and high quality realization and protection of rights and legal interests of natural persons, legal persons or other parties; **principle of truth** provides the obligation of a full and proper determination of the facts and circumstances which are relevant for the adoption of legal solutions; **the principle of hearing the parties** provides that, prior to the decision, the party must be allowed to comment on the facts and circumstances that are important for making the decision, and exceptions to this rule are prescribed by law; **the principle of evaluating the evidence** establishes that an authorized official, for his belief, based on the conscientious and careful assessment of each particular evidence and all the evidence together, and based on the results of the whole process, assesses which facts will be taken as evidence; **the principle of autonomy of decision-making** stipulates that the authority conducting the procedure is independent, within the powers defined by law or regulation,

[6] The Law on General Administrative Procedure ("Off. Gazette of Montenegro", no. 60/03 of 28.10.2003., "Off. Gazette of Montenegro", no. 32/11 by 01.07.2011.)

establishes facts and circumstances and, based on the facts and circumstances, applies regulations of the particular case and makes a decision. This Law provides for the duty of the parties to speak the truth in the process, and not to abuse the rights that are recognized by this Law or any other law or regulation of the local authorities, as well as the duty of the authorities to prevent any abuse of the rights the party has in the process. **Principle of two - tier decision making** provides a right of appeal against a decision made in the first instance, which may be denied only in cases prescribed by law. Also, an appeal is not allowed against a decision made in the second degree. The principle of judicial economy provides an obligation the ensuring the proceedings progress without delay and with less expenses for the party and other participants in the process, but so that all evidence necessary for the proper and complete fact-finding and for making a legal and correct decision are collected. The principle of providing assistance to the party stipulates the obligation of the competent authority not to allow the ignorance and illiteracy of the parties and other participants of procedure to cause harm to the rights granted to them under the law.

1.2.2. The Law on Spatial Development and Construction of Structures[7]

The Constitution of Montenegro, Article 16 paragraph 5, provides that the law, in accordance with the Constitution, regulates matters of interest for Montenegro. Law on Spatial Development and Construction of Structures was approved in august 2008, and amendments followed in 2011 and 2013. Having in mind the problems identified in practice that occurred during the implementation of earlier legislation, namely: very high fees in the procedures for obtaining building permits; very complicated procedures; and conditions and approvals necessary for the urban - technical requirements and building permits - the project of comprehensive changes began, which resulted in the adoption of the above mentioned amendments during 2013. The Law itself has great importance for the country and society as a whole, especially given the importance of space as a national good. Reforms in the field of spatial development and construction are an integral part of the reform process in Montenegro, where the policies of spatial development and construction is based on sustainable development, including the provision of normative conditions for the creation of an effective system in these areas, in comparison with developed countries[8].

The Law on Spatial Development and Construction of Structures provides two basic groups of principles. The first group of principles relates to the development of space,

[7] Law on Spatial Development and Construction of Structures ("Off. Gazette of Montenegro", no. 51/08, 34/11 and 35/13)

[8] See more: The explanatory report of adoption of amendments to the Law on Spatial Development and Construction of Structures - Ministry of Sustainable Development and Tourism, May 2013th

which, among others, is based on the principles of harmonized economic, social, environmental, energy, cultural development of the territory of Montenegro; sustainable development; contributing to balanced economic development of the territory of Montenegro; rational use and protection of land and natural resources; and compliance with European norms and standards. The second group of principles concerns the construction of structures and includes: the principle of protecting the public interest, property and assets; compliance with European norms and standards; stability and durability of structures; health, environmental and space protection; protection from the natural and technical - technological disasters; protection from fire, explosions and industrial accidents; rational use of energy and energy efficiency; protection against noise and vibration.

1.2.3. The Law on Inspection Control[9]

The Law on Inspection Control stipulates the basic principles that subjects of this law must respect. According to **the principle of prevention**, in conducting the inspection, the inspector primarily performs a preventive function. Where the inspector cannot carry out a preventative function he carries out administrative measures and actions. **The principle of proportionality** determines that inspectors, during the inspection process, take such steps and actions that are proportional to the irregularities done, and which represent a more favorable way for subject of control to achieve the objective and purpose of inspection. Through **the principle of publicity**, it is prescribed the obligation for inspection body to inform the public about the facts and irregularities identified during the inspection control, including the protection of life and health of private persons or serious disruption of public interest. **The principle of independence** proclaims the independence of inspectors during the inspection, within the rights and obligations stipulated by the law and other regulations. Article 10 proclaims **the principle of the protection** of the public interest which determines the inspector to perform inspections for the purpose of exercising and protecting the public interest and the interests of individuals and legal entities when it is in the public interest. This article also provides that the inspection is initiated and conducted ex officio, and anyone can submit an initiative to start the process of inspection. **The principle of truth** obliges inspector to, ex officio, establish facts and present evidence during the inspection control. The subject of control, in the process of inspection, may propose and present evidence in order to determine the complete and accurate facts. Lastly, **the principle of subsidiarity** stipulates the possibility that certain matters of inspection can be regulated by a special regulation. In performing the inspection, on the

[9] Law on Inspection Control ("Off. Gazette of Montenegro", no. 39/03 of 30.06.2003., "Off. Gazette of Montenegro", no. 76/09 of 18.11.2009., 57/11 of 30.11.2011.)

issues that are not regulated by this Law or a special regulation, the provisions of the Law on General Administrative Procedure are subsidiary.

2. *The methodological approach to monitoring of administrative procedures*

2.1. The principles of work of the research team

The work of the research team was based on the fundamental principles of the OSCE's trial monitoring programs. These fundamental principles that were adapted given the nature of issues and research conducted[10]. The OSCE trial monitoring programs have proven to be valuable, multidimensional tools for support in the recent reform process in the member states. Since 2013, the OSCE has focused its attention towards monitoring administrative procedures, and the implementation of the basic principle of the right on good administration in all Member States. The first concrete contribution – the Handbook for Monitoring Administrative Justice[11] - is a tool that aids practitioners in creating a monitoring program of administrative justice across Europe. The handbook was presented to member states at a meeting in Warsaw, in October 2013. A CeMi Representative was invited by the organizers of the OSCE/ODIHR to this conference to introduce his experience in the implementation of this project, as it is one of the first of its kind in Europe.

The monitoring of procedures that take place before the judicial and administrative bodies is one of the instruments that supports to the process of democratic reform in the society[12]. The right to a fair trial not only applies in criminal and civil court proceedings, but the scope of Art. 6 of the European Convention on Human Rights extends to administrative procedures as well. This position is crystallized in the jurisprudence of the European Court of Human Rights, which in some cases explicitly stated that standards of fair trial apply to all types of proceedings in which decisions are made about the rights and legally based interests and obligations of citizens[13]. As the aim of the programs implemented by non-governmental and international organizations is to increase the fairness, efficiency and transparency of the judicial and public administration system, a

[10] Since 2007, in cooperation with the OSCE Mission to Montenegro, CeMI carried out the project of monitoring the trials through which observers of CeMI had the opportunity to monitor more than 500 civil and criminal trials in all courts in Montenegro, conducted 7 thematic research and presented over 10 reports referring to respect of the principles of fair trial in the courts in Montenegro.

[11] Handbook for Monitoring Administrative Justice, OSCE's Office for Democratic Institutions and Human Rights 2013

[12] "Member States, in order to ensure greater transparency in the execution of commitments accepted in the Final Act of the Conference of the OSCE in Vienna, decided that, as a confidence-building measure, accept the presence of observers sent by the Member States and representatives of non-governmental organizations, and other interested parties, in all actions in accordance with national legislation and international law", art. 12 of Documents of the meeting of the Conference on the Human Dimension of the OSCE, Copenhagen (1990)

[13] *Ringeisen v Austria*, verdict of 16 July in 1971.; *Ferrazzini v Italy*, Verdict of 12 July in 2001.

procedural monitoring program can be a versatile and helpful tool in the process of democratic reform.

Therefore, in accordance with OSCE principles, monitoring of procedures that decide on the rights of citizens had the following features:

a. Monitoring of procedures to support overall reform of society

The monitoring of administrative procedures conducted in this project was used as a diagnostic tool for collecting and disseminating objective information about the conduction of justice in individual cases and for drawing conclusions regarding the broader functioning of the state administration. Through focused monitoring, information about practices and institutions, their capacities, as well as problems with which the citizens and representatives of the administrations face in their work, were systematically collected. On the basis of these objective findings and conclusions based on all participants in the process, recommendations for improving certain areas have been proposed, which in the future will, through advocacy activities, be directed towards decision makers to implement further reforms to strengthening system as a whole. Therefore the main goal of this project was to, through research, identify gaps in the implementation of administrative procedures in the field of spatial development and construction, and on the basis of the identified deficiencies, propose legislative, institutional and administrative changes.

b. Monitoring of administrative procedures as part of the principle of transparency of state administration

The act of monitoring procedures at its basic level aims to, through the presence of the researcher, influence the improvement of the level of transparency of institutions and promote the realization of the right to a "public trial". Public interest, which was recognized through the of cooperation between NGOs and state institutions, has resulted in improving the transparency of the work in this area, through the availability of all relevant information enabled the preparation of this report including the material the conclusions were drawn from and recommendations were brought. In a broader context, the presence of researchers and greater transparency of procedures aims to improve public and institutions awareness about the necessity of respecting the right to a fair trial and the right to good administration, in the context of compliance with international standards in these areas. It is important to mention the principles the programs are based on are in accordance with OSCE principles for monitoring judicial and administrative proceedings[14]. These are:

[14] See more: "Project of monitoring trial - Final Report", the OSCE Mission to Montenegro and CEMI, Podgorica, in 2014

1. The principle of not interfering in the proceedings

The principle of not interfering underlies the monitoring of the trial. This principle respects the principle of the independence and autonomy of the exercise of judicial and administrative authorities. Researcher analysts are obliged to respect the autonomy of each institution and the integrity of the exercise of power, and in accordance with this principle, refrain from any action that could jeopardize the decision-making process. In this context, it is important to note that non-interference does not mean a lack of initiative, engagement or interaction through communication with institutions, but it means that this daily contacts does not directly or indirectly enter into the merits of any case. The cases are analyzed at the level of occurrences from which is possible to draw some conclusions and recommendations regarding improvement of the implementation of the specific legal procedures. Also, advocacy activities, conducted within a program of this type, are aimed at a particular institutional or systemic change, not a change that will result in a particular outcome of a particular case. Therefore, noninterference is not just the absence of criticism, but it is a criticism directed to promoting institutional reform.

2. The principle of objectivity

The principle of objectivity requires that the monitoring programs of judicial and administrative processes accurately, properly and precisely report, using clearly defined and accepted standards, without bias towards a party or subject to the proceedings. principle also serves to - by minimizing the perception of bias - encourage the acceptance of the findings, conclusions and recommendations of the program by the widest group of participants in the proceedings. To achieve this goal, the findings of the report must be based on concrete examples that are analyzed in terms of the national legal order, as well as international standards in a particular area, so that the conclusions and recommendations are made in a completely objective manner.

3. The principle of consent

Institutional cooperation in the implementation of programs of this type is an essential part one of its most important components. In that context, through the partnership between the state institutions and organizations that implements monitoring of the judicial and administrative proceedings, synergy is achieved. This often results in high-quality policy proposals based on an objective picture of the quality of law enforcement, human, technical and administrative capacity of the institutions, as well as the specific problems that face several institutions and citizens during the conduct the proceedings. Through this project, CEMI has established cooperation through the signing of a memorandum of cooperation with: Ministry of Sustainable Development and Tourism, Administration for Inspection Affairs, Municipality of Budva, Ulcinj Municipality and the

Municipality of Zabljak. Through collaboration on the project inter-institutional relations have improved, as well as the exchange of information.

2.2. The research team

Monitoring of administrative procedures in the field of spatial planning and construction is a program thats content and planned activities require qualified legal knowledge and previous experience in the implementation of programs of this type. This is especially important since that the existence of analytical skills of the team members is one of the most important requirement in which this type of programs rely on, especially when it comes to the final stage of implementation activities - reporting on the activities conducted. CeMI`s team of researchers is consisted of team coordinator, two legal advisors and an external legal consultant. During the realization of this project training programs for members of the research team were organized, which significantly improved the capacity of CeMI for program of monitoring administrative procedures. Also, the methodology of monitoring administrative procedures in the field of spatial planning and construction was created, which will further facilitate the implementation of monitoring activities in the following period and will contribute to the improvement of the efficiency of the observers.

2.3. Techniques of monitoring of administrative procedures

In the process of monitoring procedures, the focus of the observers was not on the merits of a case, but the implementation process in accordance with the relevant national legislation and international standards. The information obtained through the analysis of cases, was entered by researchers in a form of standardized questions and prepared individual case reports that included supporting materials. This facilitated summarizing research results. Forms and single reports are the basis of this Report, which is, according to the OSCE methodology, a systematic collection of observations, along with conclusions and recommendations.

2.4. The sample of monitored cases

The subject of analysis and research were administrative procedures in the field of structures construction that started after the adoption of the Law on Spatial Development and Construction of Structures in 2008, with special focus on the processes that started during 2012 and 2013. It should be noted that the research period coincides with the period of amendments to the Law on Spatial Development and Construction of Structures. Thus in certain indicators that researchers predicted (for example: the deadline for making a decision in the procedure of applying for a building permit) attention was paid to analyze objects in terms of the laws that applied at the time of submission of the initial act in the proceedings. The method of random selection of cases was selected as the primary method of selection. In the municipalities of Budva, Ulcinj and Zabljak administrative procedures related to the issuance of construction permits were analyzed. These were carried out before the Secretariat for Spatial Planning and Sustainable Development. It should be noted that in the municipalities of Ulcinj and Zabljak all cases which referred to administrative proceedings under the requirements for the issuance of building permits in the last two years were analyzed. Also, during the research, cases that were conducted before the Ministry of Sustainable Development and Tourism were analyzed in relation to the three above mentioned municipalities. The focus of the research activities was on the procedures for applications for construction permits and occupancy permits. Conduct of the Administration for Inspection Affairs was analyzed through an analysis of inspection procedures in the field of spatial planning and construction of structures in the municipalities of Budva, Ulcinj and Zabljak, during 2012 and 2013. Research was conducted through an analysis of inspection procedures within the scope of the jurisdiction of the Inspection for spatial protection, the Urban Inspection and the Construction inspection in three municipalities concerned.

Table 1: Analyzed administrative procedures in the field of spatial development and construction

MUNICIPALITIES		**MINISTRY OF SUSTAINABLE DEVELOPMENT AND TOURISM**		**ADMINISTRATION FOR INSPECTION AFFAIRS**	
	NUMBER OF ANALYZED CASES		NUMBER OF ANALYZED CASES		NUMBER OF ANALYZED CASES
Budva	51	Cases relating to Budva	15	Construction inspection	4
Ulcinj	23	Cases relating to Ulcinj	5	Urban inspection	12
Žabljak	21	Cases relating to Zabljak	1	Inspection for spatial protection	4
TOTAL:	95	**TOTAL:**	21	**TOTAL:**	20

The research also involved procedures in administrative proceedings before the Administrative Court, which is either directly or indirectly related to the field of spatial development and construction. Due to the specificity of the matter, procedures were grouped and analyzed according to the following administrative areas: the area of economic development, the area of inspection control and the area of local government.

Table 2: Analyzed cases before the Administrative Court

The total number of cases in 2012 - 3400		The total number of cases in 2013 - 3129	
Area of economic development (2012)		Area of economic development (2013)	
Total:	12	Total:	6
Municipality of Budva:	3	Municipality of Budva:	1
Municipality of Ulcinj:	/	Municipality of Ulcinj:	/
Municipality of Zabljak:	/	Municipality of Zabljak:	/
Area of inspection control (2012)		Area of inspection control (2013)	
Total:	32	Total:	10
Municipality of Budva:	3	Municipality of Budva:	1
Municipality of Ulcinj:	5	Municipality of Ulcinj:	/
Municipality of Zabljak:	/	Minicipality of Zabljak:	/
Area of local government (2012)		Area of local government (2013)	
Total:	56	Total:	29
Municipality of Budva:	12	Municipality of Budva:	2
Municipality of Ulcinj:	3	Municipality of Ulcinj:	/
Municipality of Zabljak:	1	Municipality of Zabljak:	1

3. *Meeting the deadlines for decision-making in the first instance administrative procedures issuing construction permits*

According to the guarantee of the effective implementation of the administrative proceedings, the authorities dealing with the case, are required to provide efficient and quality realization and protection of rights and legal interests of natural persons, legal persons and other parties. In addition to the quality and success of procedure, the authorities responsible for the conduct of proceedings are obliged to respect the principle of economy of administrative proceedings, pursuant to which the aforementioned must be taken without delay and with minimum cost to the party and other participants in the process, but so that all the evidence needed for the proper and complete determination of the facts and making a lawful and proper solutions, is obtained. The finalization of the administrative procedures within a reasonable time will depend on a multitude of circumstances, such as: the complexity of the case, the behavior of the initiator of the procedure, the conduct of the authorities, as well as the importance of the right which is the subject of the procedure. These criteria, developed by the European Court of Human Rights through its long-standing practice, can be, within the concept of the "trial within a reasonable time", applied without exception and to the conduct of administrative procedures, in which the administrative authorities are obliged to act in a reasonable time, protecting the parties in the procedure of the excessive and unreasonable delays in processing time[15].

Article 94 of the Law on Spatial Development and Construction of structures stipulates that the construction permit is issued within 30 days from the date of application. Deviation from this period exists in the situations where a construction permit is issued for facilities that require an environmental impact study. In this situation construction permits can be issued within 60 days from the date of application. Construction permit include: basic information about the applicant, project manager and auditor; location; the type and purpose of the facility; dimensions of the building; construction phase of the facility; obligation to develop the main project, if a construction permit is issued on the basis of the preliminary design of the project. The Law in this section provides that a construction permit is published on the website of the administrative body or local authorities, within 7 days from the date of publication. In addition, in the penalty provisions, the Law provides that the a legal person will be fined in the amount of 2.000 - 40.000 € for the offense if it does not decide on the application for a construction permit within 30 or 60 days from the date of application.

[15] See verdicts of the European Court in cases *Scopelliti v. Italy*, paragraph 18, *Deweer v. Belgium*, verdict of 27 February in 1980, paragraph. 42 *B. v. Austria*, verdict of 28 March in 1990, para. 48, *Proszak v. Poland*, verdict of 16 December in 1997, paragraphs 30-31, and *Sahin v. Croatia*, verdict of 19 June in 2003

Within the research on meeting the deadlines for decision-making in first instance procedures in the field of construction, we analyzed a total of 112 cases. Of these, 95 cases were conducted before the competent local government secretariats, and meeting deadlines in the proceedings on the application for the issuance of construction permits was analyzed, while in 17 analyzed cases conducted before the competent Ministry, the subject of analysis was meeting the deadlines in the procedures related to issuing construction and occupancy permits. All 17 cases before the competent Ministry are related to the three respective municipalities.

Of the analyzed 95 cases, in a significant number it was found that the authorities respected the deadlines for issuing construction permits. However, there are certain cases in which the competent authorities implement actions inefficiently, so that the cases in which proceedings on the application for the issuance of construction permits last for eight and a half months. This was identified in municipalities (Municipality of Budva - one case), twelve months (Municipality of Ulcinj - one case), fifteen months (Municipality of Zabljak - one case). These examples represent isolated cases in practice of competent municipal authorities, but as such, jeopardize the principle of decision making in a reasonable time. As a consequence of these individual cases, the average period of the proceedings for the issuance of construction permits is increasing - which would, without them, certainly be reduced to reasonable limits as prescribed by the Law.

MUNICIPALITY OF ZABLJAK	**NUMBER OF DECISIONS**
Decision was made within 30 days	11
Decision was made within 30 to 60 days	3
Decision was made in period after 60 days	7
TOTAL:	21

Analysis on the decisions on the issuance of construction permits in the municipality of Zabljak shows, 14 cases were resolved within the period of 60 days, out of which 11 cases was resolved less than 30 days. In 3 cases, regarding the request for a construction permit, requests solved within from 30 to 60 days. In 7 cases, the decision on the request for the issuance of construction permits was issued in period after 60 days. It is important to emphasize that in the reporting period, in the municipality of Zabljak, only 3 decisions regarding the request for a construction permit in which were applied provisions of the Law on Spatial Development and Construction of Structures, adopted in July 2013. Average time for decision making in these three cases was 30-60 days from application, indicating non-compliance with the time limit provided in Art. 93 of the Law.

MUNICIPALITY OF ULCINJ	NUMBER OF DECISIONS
Decision was made within 30 days	6
Decision was made within 30 to 60 days	7
Decision was made in period after 60 days	10
TOTAL:	23

In 13 cases in the municipality of Ulcinj the decision on the request for a construction permit was issued within 60 days[16]. However, frequent violation of legal deadlines occurred, this was recorded in 10 cases analyzed. In these cases, the decision regarding construction permits were made, on average, after 6 months from the date of application for the permit, and there is one case in which a request for a construction permit filed in 1989, based on which the decision was made after 14 years (19.07.2013 year). Decisions in procedures were subject to an average delay of over 6 months and that represents a negative trend, endangering the principle of decision-making within a reasonable timeframe.

MUNICIPALITY OF BUDVA	NUMBER OF DECISIONS
Decision was made within 30 days	34
Decision was made within 30 to 60 days	11
Decision was made in period after 60 days	6
TOTAL:	51

In the Municipality of Budva competent Secretariat, analyzed cases were usually decided within the legal period of 30 days from date of application. This especially applies to the sample cases in requests for construction permits were issued were submitted in the second half of 2013 and the first half of 2014. However, among the analyzed cases, decisions made after 60 days from application were evident. In one case, the decision in the procedure was made within eight and a half months from the day of request submission for a construction permit (October 2012), which, although isolated case, is a negative example.

[16] In practice of the Secretariat for Spatial Planning and Sustainable Development of the Municipality of Ulcinj was recorded a case in which a decision on the request for a construction permit was issued within 1 day. In this case the request was submitted by a natural person 27.03.2013 , and the Secretariat has made the decision by 28.03.2013.

This may negatively affect the total average duration of proceedings before the competent authority. The decision-making procedures at first instance should be noted. In accordance with the provisions of the Law on Spatial Development and Construction of Structures the competent authority is the Ministry of Sustainable Development and Tourism regarding the structures in the respective three municipalities[17]. During the research, the sample of cases handled by the Ministry included 13 cases of the procedures related to the issuance of construction permits and four cases regarding the requirements for the issuance of occupancy permits. Out of 13 decisions related to the issuance of construction permits, six decisions were brought within the legal deadline, up to 60 days from the day of request submission, while in seven cases it was noted that decision-making lasted after prescribed deadline. In one case it was noted that a decision was issued after 15 months. In the four cases analyzed regarding the requests for the issuance of occupancy permits, a decision was not made within the legal deadline in one case. In that case the decision was issued six months from the date of receiving the report that the object is fit for use.

[17] Procedures related to the issuance of construction permits (Art. 91 paragraphs 2 of the Law), occupancy permits (Article 118 of the Law), removal of structures (Article 142 of the Law)

4. *The right to a public announcement of the decision*

The transparency of work, as a fundamental principle of public decision-making, is one of the most important general principles that administrative bodies must adhere to. The implementation of the principle of transparency of work enables that other fundamental principles of administrative bodies can be monitored and evaluated - such as the principle of legal security and predictability, or timeliness of decision-making. Article 6 of the European Convention contains a definition according to which decisions in all types of proceedings to which it applies art. 6 (criminal, civil, administrative, etc.)[18], must be announced publicly. According to the practice of European Court, public announcement of the decision does not mean that it must always be read before the court or authority - the meaning of this provision is the decision is made available to the public. According to the principle of transparency, which is recognized as one of the fundamental principles of good governance in **Recommendation Rec (2007) 7** on good administration of the Council of Europe[19], public administration authorities should ensure that all legal entities be informed about the actions and decisions, including the publication of official documents and in addition, grants the right of access to official documents in accordance with the rules relating to the protection of personal data.

The right to a public announcement of the decision of administrative procedures in the field of urban development and construction of structures is regulated by a number of provisions of the Law on Spatial Development and Construction of Structures. These provisions provide obligations for the Government, Ministry of Sustainable Development and Tourism, as well as local authorities, to publish various types of legal documents in the proceedings of spatial development or construction of structures. Part of the research, in terms of publishing acts in the process of spatial development, is included in the analysis presented in separate chapters of the Study, while this chapter of the Report will be present findings obtained during the survey, related to:

- The public announcement of the decision on the request for the urban - technical requirements of the Secretariat for Planning and Development of the municipalities of Budva, Ulcinj, and Zabljak and the Ministry of Sustainable Development and Tourism, in accordance with the provisions of Art. 62a of the Law on Spatial Development and Construction of Structures - according to which the request for issuance of urban - technical requirements and urban - technical requirements

[18] See: *Ringeisen v. Austria*, verdict of 16 July in 1971

[19] The Committee of Ministers of the Council of Europe, Committee of Ministers to member states CM / Rec (2007) on good governance, 2007 https://wcd.coe.int/ViewDoc.jsp?id=1155877&Site=CM

issued in written form, should be published on the website of administrative bodies or local authorities, within seven days from the date of submission, or issuance;

- A public announcement of the decision on the requirements for the issuance of construction permits by the Secretariat for Planning and Development of the municipalities of Budva, Ulcinj, and Zabljak and the Ministry of Sustainable Development and Tourism, pursuant to Art. 94 of the Law on Spatial Development and Construction of Structures. Requires the construction permit is published on the website of administrative bodies or local authorities, within seven days from the date of issuance;
- A public announcement of the decision on the requirements for the issuance of occupancy permits by the Secretariat for spatial planning and sustainable development of the municipalities of Budva, Ulcinj, and Zabljak, in accordance with the provisions of Art. 121 of the Law on Spatial development and Construction of Structures - requires the occupancy permit is published on the website of administrative bodies or local authorities within seven days from the date of issuance;
- Public announcement of the decision in procedures on appeal against the decision of local authorities in the field of urban development and construction of structures, which fall under the jurisdiction of the chief administrators of the municipalities of Budva, Ulcinj, and Zabljak;
- Public announcement of the verdicts in administrative disputes before the Administrative Court of Montenegro.
- Since the adoption of the Law on Spatial Development and Construction of Structures (analyzed period 2008-2014) secretariats have established practice of publishing lists of requests received for the issue of urban planning - technical requirements and issued urban - technical requirements. Therefore Secretariats have not complied with the obligation under Art. 62a of the Law on Spatial Development and Construction of Structures, pursuant to which the request for issuance of urban - technical requirements and urban - technical requirements issued in writing should be published on the website of the local administration bodies. In the reporting period the websites of the Secretariats also contain lists of requests for construction permits and lists of issued construction permits - therefore the Secretariats have not complied with the obligation under Art. 94 of the Law on Spatial Planning and Construction which stipulates that construction permit should be published on website of the local administration.

Websites of the Secretariats also contain lists of requests for construction permits and lists of issued construction permits in the reporting period, thereby Secretariats have not complied with the obligation under Art. 94 of the Law on Spatial Planning and Construction which stipulates that construction permit should be published on website of the local

administration. Finally, the lists of the requirements for the issuance of occupancy permits and lists of issued occupancy permits can be found on the websites. This does not comply with the provisions of Art. 121 of the Law on Spatial Development and Construction of Structures, according to which an occupancy permit is published on the website of the local authority.

Advances in this area were recorded in the municipalities of Zabljak and Budva over the last months of research implementation. The Secretariat for Spatial Planning of the Municipality of Zabljak published urban - technical requirements, construction and occupancy permits issued during 2013 and 2014. However the requirements for issuance of urban - technical requirements cannot be found on their websites. On the other hand, the Secretariat of Planning of the Municipality of Budva, by setting up a new web address, improved the transparency of its work by a large extent, publishing all documents in 2014, with a clear view and availability of them.

During the research the publication of decisions in procedures on appeal against the decision of local authorities in the field of urban development and construction of structures were analyzed. These fall under the jurisdiction of the chief administrators of municipalities of Budva, Ulcinj, and Zabljak. On the Chief Administrator of the Municipality of Budva's website - in spite of the recent improvement – one cannot find decisions in proceedings on appeal of natural and legal persons in administrative matters within the jurisdiction of the Municipality of Budva. On the website of the Chief Administrator of the Municipality of Ulcinj, which is located within the website of the Municipality of Ulcinj, no decisions in proceedings on appeal against the decision of the first instance body in the administrative proceedings were published. Additionally no published decisions in procedures on appeal against decisions of the first instance body are found on the website of the Chief Administrator of the Municipality of Zabljak.

The Ministry of Sustainable Development and Tourism respects the obligation of publishing all decisions and accompanying documents on its website. In the homepage of the Ministry's website, there is a section dedicated to urban - technical requirements, construction permits and occupancy permits, in which can be found all relevant information on the procedures of issuing urban - technical requirements, construction permits and occupancy permits. On the website of the Ministry can be found all the information and documents from 2011, while the lists of requests and issued urban - technical requirements, construction permits and occupancy permits, for year of 2010, are published. In addition, the Ministry's website contains decisions in procedures in which there has been a suspension or termination of the proceedings, decisions in which there has been a refusal to issue the act, decisions to revoke construction permits and other decisions.

In addition to the transparency of the work of respective administrative bodies and local authorities the project analyzed the publications of the Administrative Court of Montenegro. The Administrative Court respects the principle of transparency of work - through availability and informing the public about decisions, actions, legal opinions, initiatives, proposals and other issues from the work of the court. Through publication the Administrative Court, in many ways, contributed to the strengthening of its institutional integrity and public confidence in the legality of its work. Verdicts of the Administrative court are published daily on its website - www.sudovi.me/USCG (together with simultaneous submitting to the parties). Judgments, for clarity and ease of use were published by administrative areas. In addition, the Administrative Court has developed a practice of publishing verdicts of the Supreme Court which overturned and reversed verdicts of the Administrative Court, by extraordinary legal remedy. The principle of transparency is provided through the publishing of the collection of verdicts and Work Report of the Administrative Court. Currently on aforementioned website of the Administrative Court can be found all the collections of verdicts and work reports of the Administrative Court since 2005. These documents, published and accessible in electronic form, are an important resource that is available to professionals and the general public and through which is realized the principle of transparency in the highest degree.

5. Reasoning of decisions in the first instance administrative procedures issuing construction permits

Decisions made about the rights and legally based interest of citizens need to be explained irrespective of the type of proceedings. This serves as a protective mechanism of citizens' rights and aims to guarantee an individual that the authorities cannot arbitrarily deprive him/her of the enjoyment of a right or prevent the realization of the right. From the content of Article 6 of the European Convention on Human Rights and through the jurisprudence of the European Court of Human Rights, it was concluded that the existence of judicial reasoning in decisions is a part of the right to a fair trial[20]. On one side, reasoning of all kinds of procedures was necessary because it implies the possibility of the parties to examine the reasons for the decision and to present their arguments in the appeal proceedings. The need for reasoning in judicial decisions is carried out for reasons of a legal nature, because the legal views expressed in the decision can be tested only if the court gave full and logical explanation. A Court decision that does not contain an explanation can hardly be argued to be legitimate, irrespective of if it is correct. Reasoning of a decision can be seen as an element of the right to be heard, because from the reasoning court decisions should be seen whether the court heard the arguments of the parties and considered the presented evidences with the necessary care[21].

Research on the reasoned decisions of first instance authority in the procedures related to the issuance of construction permits are evaluated in terms of the implementation of international standards concerning the right to a reasoned decision, and rules on the form and component parts of the solution. The Law on General Administrative Procedure. Art. 196 of the Law on General Administrative Procedure provides that the competent authority issues a decision on an administrative matter that is the subject of procedures on the basis of relevant facts set forth in the procedures. Pursuant to the provisions of Art. 200 paragraph 3, a written decision shall include: introduction; disposition (dictum); reasoning; instruction on legal remedy; name of the authority with number and date; signature and official stamp of authority. In accordance with Art. 203, paragraph 2 of the Law on General Administrative Procedure, the reasoning of the decision must include: **a brief statement of claims of the parties**; **established facts**, **if necessary, the reasons significant for the evaluation of evidence as well**; **reasons for which some of the requests of the parties were not upheld**; **material terms and reasons that, given the established facts, lead to the decision given in disposition**. In this context,

[20] *Tori Ruiz v. Spain*, verdict of 9 December 1994

[21] See more: P. Goran Ilic: "The right to a reasoned judicial decision," CRIMEN (II) 2/2011, Faculty of Law, University of Belgrade

the reasoning of the decisions of the first instance body that have been made in the procedures related to the issuance of construction permits .

The analysis shows that there are cases in which the competent authority decisions that are incomplete or do not contain enough information about the facts and reasons that in making the decision. In one analyzed case, in which a decision on the issuance of construction permits was issued by the Ministry of Sustainable Development and Tourism, the solution did not contain information on the size of the urban portion of the land on which the license was granted for the construction. Also, in the above mentioned decision were not specified data on occupancy area of the plot. In this case, urban - technical requirements are issued for the entire parcel, and the construction permit was issued for a part of the plot.

In one analyzed case in which the issuance of construction permit was issued by the Ministry of Sustainable Development and Tourism, the decision did not contain a label of planning documents based on which the construction permit was issued. Also, the decision did not contain labels of urban land, only the labels of cadastral parcels mentioned, which are not the basis for construction. The decision was also incomplete because the same labels were not included on the planning document on basis of which was issued urban - technical requirements. In another analyzed case, a decision on the issuance of construction permits was issued to the investor who was a foreign company that was not registered in Montenegro in the accordance with Art. 80 of the Company Law, by the Secretariat for Spatial Planning and Sustainable Development. While checking the web site of CRPS, it was determined that this legal entity was not registered in Montenegro. In the reasoning of the decision says the fact that the mentioned legal entity, with request for a permit, enclosed a list of real estate as well - proving his ownership of the subject property (land). From the case files it could not be determined whether the competent authority in the issuance of the construction permit, determined if the investor, in a particular case, may be a carrier of property rights on immovable property in accordance with the provisions of the Law on Property - and Legal Relations of Montenegro, considering that in the decision on issuing construction permit there was no element found as to the identity of a legal person, other than its name (head office business registration number, etc..).

In five cases analyzed, the Secretariat for Planning and Sustainable Development of the Municipality of Budva suspended the procedure for issuing construction permits without conclusion. In the reasoning of the five conclusions the Secretariat stated that the procedure for issuing discontinued because the parties gave up on the application submitted for a construction permit temporarily, because it "is not yet resolved the manner of payment of compensation to the Regional Water Supply". All conclusions are adopted by the requests for the issuance of construction permits that were submitted during 2014. The

Law on Regional Water Supply of the Montenegrin coast[22] in the art. 25 provide the obligation to pay a special fee for the construction of a regional water supply system on investment for construction of structures on the territory of the Montenegrin coast. Art. 26 of the aforementioned Law states that a separate fee may be charged up to a completion of construction of the regional water supply system. The Ministry of Sustainable Development issued an occupancy permit for a regional water supply system and Tourism in November 2013, by which construction of the building was completed, therefore there was no obligation to pay a special fee in terms of the aforementioned provisions of Art. 25 of the Law on Regional Water Supply of the Montenegrin coast. In that sense, there are some questions whether the payment of the regional water supply system may be grounds for suspension of proceedings initiated by requests for the issuance of construction permits in the municipality of Budva and if a special fee should be charged in the procedures for construction of structures in the municipality of Budva, after the issuance of the occupancy permit for the regional water supply system.

In five cases analyzed where the decision on the issuance of construction permits was issued by the Secretariat for Spatial Planning, Environment and Dwelling and Communal Services of Municipality of Zabljak, it was noted that the statement and reasoning of the decisions contained incomplete information. In the mentioned decisions there was a lack of data provided on urban parcels lack but construction permits were issued on the basis of information about cadastral parcels which do not represent the basis for the construction of structures. Also, the reasoning contains information about cadastral parcels and issued urban - technical requirements, without specifying planning documents upon which are issued the conditions, and data on urban plots. In the mentioned decisions dispositions were incomplete and the reasoning utterly general, which hampers the verification of the legality of the procedure for issuing construction permits.

[22] The Law on Regional Water Supply of the Montenegrin coast ("Off. Gazette of Montenegro", no. 13/2007)

6. *The Right of Appeal*

The Constitution of Montenegro in Art. 20 guarantees everyone the right to a legal remedy against the decision concerning his right or legally based interest. This constitutional principle is implemented through the principle of a two-tied administrative procedure - one of the fundamental principles of the Law on General Administrative Procedure. According to this principal the administrative procedure is conducted at two levels. Firstly where the initial administrative procedure is implemented as normal and obligatory; and the second level, where the administrative procedure is conducted as a secondary or appeal procedure. The decision made by the authority of second instance is final, which means that it cannot be appealed, but an administrative dispute can be initiated.

All analyzed decisions of local authorities contain instructions on legal remedy, or legal advice, indicating that the parties may appeal against the decision to the Chief Administrator (the appellate authority) within 15 days of receiving the decision. The appeal is submitted through local government bodies, and when submitting the appeal the party must also submit proof of payment of taxes in an amount that varies depending on the municipality. Thus, in the municipalities of Budva and Ulcinj, appeal against the decision on the construction permit costs 5.00 €, while for the same decision in the municipality of Zabljak a fee of 4.00 € is charged.

A decision of the Ministry of Sustainable Development and Tourism states that the decision in the administrative procedure is final and cannot be appealed, but the complainant may initiate an administrative dispute before the Administrative Court within 30 days of receipt. In an analyzed case, the Administration for Inspection Affairs - Inspector of City Planning, on the basis of Art. 148, paragraph 1, point. 8 of the Law on Spatial Development and Construction of Structures, filed a petition for the annulment of the decision of the Ministry of Sustainable Development and Tourism, which issued construction permit for construction in the municipality of Budva, since "as the main project on the basis of which it was issued construction permit is not completed, or revised, in accordance with the planning document and urban-technical requirements". The Ministry's decision dismissed the proposal by urban inspectors, noting that the subject of annulment is a final decision of the Ministry of Sustainable Development and Tourism; therefore there is no basis for the implementation of the provisions of Art. 215 paragraph 4 of the Law on General Administrative Procedure, which provides that a final decision may be annulled, repealed or amended, solely on the basis of extraordinary legal remedies prescribed by the Law. Extraordinary legal remedies, determined by the Law on General Administrative Procedure, are: reopening of the procedure; special cases of termination,

cancellation and changing decisions; modification and annulment of decisions related to administrative procedure; revocation and cancellation based on official supervision, emergency cancellation and declaration of decisions void. In the decision, the Ministry further notes that pursuant to Art. 257, paragraph 2 of the Law on General Administrative Procedure, the final decision may be canceled through official supervision if it clearly violated the material law. In art. 258 paragraph 1 of the same Law, it is provided that the decision may be canceled or terminated based on official supervision of an appellate body, and if there is no second instance body, such as in this case, the decision may be revoked or canceled by the body authorized to supervise the work of the authority that issued the decision. The Ministry concluded that, pursuant to the above, the Ministry has no jurisdiction to decide on the legality of the controversial decisions on the basis of official supervision. In this case, therefore, the Ministry relies on formal conditions, under which it is possible to conduct the procedure of the official supervision and terminate the final decision of the authority, if it is obvious that they violated the material law. The Ministry notes that, in this case, there is no second instance body that can conduct the procedure of official supervision - but does not specify which authority is authorized to supervise the work of the Ministry, which would be responsible to value the legality of the contested decision in this case.

7. *The analysis of conduct of inspections in the field of urban development and construction of structures*

Regulation on the organization and functioning of public administration, which entered into force on 20 January 2012, provides the legal basis for the establishment of a single inspection authority – the Administration for Inspection Affairs. The Administration was founded with the aim of achieving greater efficiency of control, reinforcement of the cost efficiency of supervision, preventing the occurrence of positive and negative conflict of competence, achieving adequate mutual cooperation between the inspection bodies, increasing the professionalism of inspectors and prevention of possible elements of corruption, as well as enhancing cooperation between inspection and other bodies during the inspection. The Administration for Inspection Affairs, pursuant to the provisions of the Law on Spatial Development and Construction of Structures, performs inspection in the field of spatial development and construction of structures, within the jurisdiction prescribed by the Law. Inspection, entrusted to the Administration for Inspection Affairs, in this area is conducted through: inspection in the field of spatial development (conducted by the urban inspection and inspection for spatial protection) and inspection in the field of a structures construction (which is performed by construction inspections).

During the research, we analyzed a total of 20 cases of inspection, 16 of which were conducted in the field of spatial development by urban inspection and inspection for spatial protection, while 4 were conducted in the field of construction of structures by construction inspection. Analyzed cases of inspection were opened during 2012 and 2013. Due to the extensive subject material and documentation, was not possible to include a larger sample of cases of inspection in the field of spatial development and construction in the reporting period.

7.1. Inspection in the field of spatial development

Pursuant to the provisions of the Law on Spatial Development and Construction of Structures, inspection in the area of spatial development is conducted through urban inspection and inspection for spatial protection.

7.1.1. Urban inspection[23]

The urban inspection body, in accordance with legal provisions, provides inspection for the entire territory of Montenegro in relation to all planning documents, as well as the objects referred to in Article 91 of the Law (state structures of general interest, etc.), by checking, among other things, whether the planning document is prepared in accordance with this Law; whether a planning document is adopted in accordance with this Law; whether the legal entity meets the requirements for making a planning document prescribed by this Law; whether the separate is made, or whether the urban - technical conditions are issued in accordance with the plan; whether the preliminary or main project, based on which a construction permit has been issued, is made, or revised, in accordance with the plan and urban - technical conditions etc. When a violation of law or regulation is determined, the urban inspection body is obliged to conduct administrative measures and actions assigned to it by the Law, such as: to alert the authority responsible for making decisions on the planning document, if it determines that the plan document is prepared contrary to this Law, or initiate proceedings to review the legality of the decision; prohibit the preparation of the planning documents, if the legal entity is not eligible for the preparation of planning documents prescribed by the Law; propose to administrative bodies revocation of the license of entities which do not meet the requirements of this Law for the preparation of planning documents; warn the authority competent for the adoption of planning document that the document was not adopted in accordance with the Law; propose to the Ministry to initiate proceedings of legality review of the planning document if it determines that it is not adopted in accordance with the Law; propose to the administration or the local authority, to annul the decision of the construction permit, if it finds that the preliminary or main project, based on which the construction permit was issued, is made contrary to the planning document and/or urban - technical requirements, and other administrative measures and acts in accordance with the Law.

During 2012 and 2013 the urban inspection body identified 51 irregularities at the competent Secretariat of Spatial Development. On this basis it submitted 51 proposals for the annulment of construction permits. Also, the urban inspection – based of the established irregularities, submitted 12 requests for initiating misdemeanor proceedings against the responsible officials in the secretariats[24].

[23] In this inspection work 5 inspectors, including the Inspector General. All inspectors have university degree (Dipl. Ing. of architecture / construction)

[24] Data from the Administration for Inspection Affairs - Urban inspection – information no. 0402/1, of 05.12.2014.

Table 6: Conducted controls of urban inspection at the Secretariat for Spatial Planning, Municipality of Budva, Ulcinj, and Zabljak during 2012 and 2013

	2012			2013		
Municipality	UTR	Proposal for annulment of construction permit	Request for initiating misdemeanor procedure	UTR	Proposal for annulment of construction permit	Request for initiating misdemeanor procedure
Ulcinj	8	0	0	1	0	0
Budva	48	31	8	35	17	3
Zabljak	5	0	1	1	0	0

As can be seen from the table, during 2012 and 2013 the urban inspection body filed proposals for the annulment of construction permits in 48 cases in the municipality of Budva. Within analyzed cases, it was noted that in the course of inspection several categories of irregularities were identified in the work of the Secretariat for Spatial Planning and Sustainable Development in the previous two years. The observed irregularities related to:

- Cases construction permits being issued contrary to the provisions of the Law on Spatial Development and Construction of Structures and contrary to planning documents;
- Cases of issuance of urban - technical requirements contrary to the provisions of the Law on Spatial Development and Construction of Structures and contrary to planning documents;
- Cases of adoption of main projects contrary to urban - technical requirements;

It should be noted that urban inspection body, in determining cases containing official's actions that included elements of criminal liability, filed a request for initiation of misdemeanor liability to the competent authority. During 2012 and 2103, the urban inspection body submitted requests for initiating misdemeanor proceedings against the responsible officials in 12 cases. In 6 cases misdemeanor liability of officials in the Secretariat for Spatial Planning and Sustainable Development in the municipalities of Budva and Zabljak were found. In one case, an official in the Secretariat for Spatial Planning of the Municipality of Budva was acquitted after conducting misdemeanor procedure. In four cases, requests for initiating misdemeanor proceedings were dismissed because of the

statute of limitation for misdemeanor proceedings[25]. The misdemeanor case, based on request of urban inspection, is still pending.

7.1.2. Inspection for spatial protection

The Inspection for Spatial Protection body[26], in accordance with legal provisions, checks whether a construction permit has been issued, or if authorization has been given for the construction of temporary structures or installation of structures of temporary character. Upon determining that the construction of the structure is done without a construction permit or without authorization for temporary structures, the inspector of spatial protection has the obligation and authority to: order the demolition of the structure and restore the area to its original state; order the removal of temporary structures and restore the area to its original condition and seal structure or site.

During 2012 and 2013 the inspection for spatial protection body conducted a total of 1448 reviews in Budva, Ulcinj, and Zabljak. At the same time, the inspection for spatial protection body has adopted 245 decisions on demolition. Based on the established irregularities, the inspection for spatial protection boyd in the past two years, submitted a total of 73 criminal charges[27].

Table 7: Conduction of Inspector of spatial protection in the municipalities of Budva, Ulcinj, and Zabljak during 2012 and 2013

	2012			**2013**		
Municipality	Number of reviews	Number of decisions on demolition	Number of criminal charges	Number of reviews	Number of decisions on demolition	Number of criminal charges
Ulcinj	390	92	36	586	76	28
Budva	168	56	5	121	2	0
Zabljak	88	8	2	95	11	2

[25] Pursuant to Article 59 Paragraph 1 of the Law on Misdemeanors misdemeanor proceedings can not be started or run if a year has elapsed from the date the offense was committed.

[26] In this inspection tasks of inspection were performed by 18 inspectors, including the Inspector General. All inspectors have university degree (3 LLB, 3 Economists, 3 Ing. of Agriculture, 1 Biologist, three civil engineers, one engineer of metallurgy, 1 Master of Ecology, 1 politicologist and 1infantry officer).

[27] Data obtained from the Administration for Inspection Affairs - Inspector for spatial protection – information no. 0401/1, of 06.18.2014.

From the data it can be concluded that over the last two years the inspection of spatial protection body has performed the most important part of its activities in the municipality of Ulcinj. Thus, according to data obtained by the Inspection for Spatial Protection, found that in the municipality of Ulcinj performed of 976 reviews - which is 67% of the total number of reviews during the reporting period for the three municipalities. At the same time, 168 decisions on demolition of structures were made in the municipality of Ulcinj - which is 68% of the total number of decisions on demolition in the past, in the respective three municipalities. And finally, 64 criminal charges against persons on the territory of the Municipality of Ulcinj were filed, based on irregularities detected. This confirms that one of the major problems the municipality of Ulcinj faces – is precisely the problem of a large number of illegally constructed structures, which resulted in a large number of reviews and the decisions to demolish, on the basis of Art. 150 of the Law on Spatial Development and Construction of Structures.

7.2. Inspection in the field construction of structures

Construction inspection[28], according to the Law, performs inspection in the construction of structures in relation to the objects referred to in Article 91 (state objects of general interest, etc.), checking in particular whether the investor started the preparatory work for the construction of the structure in accordance with the Law; whether the investor reported the beginning of construction of the structure seven days prior to the start of construction of the structure; whether the construction of the structure is performed in the accordance with the revised main project; whether the revised main project is made pursuant to the preliminary design for which construction permit was issued; whether the construction of the structure is done according to the regulations for construction of structures and existing regulations on technical measures, norms and standards in the construction, and exercising other powers in the accordance with the Act.

Upon determining a violation of the Law or regulation, the construction inspector is obliged to carry out administrative measures and actions entrusted by the Law - to order the closure of the site if the preparatory works are not performed in the accordance with the Law; prohibit the construction of a structure if the construction of the structure is not made in accordance with the revised main project; prohibit the construction of a structure if the revised main project is not in accordance with a project on the basis of which the construction permit was issued and order alignment of the project with the preliminary

[28] In this inspection work three inspectors, including the Inspector General. All inspectors are civil engineers.

design; order the demolition or removal of the structure and restore the land to its original state; prohibit the use of the structure for which it is issued occupancy permit; order removal of structures of temporary character that the investor did not remove within 30 days of completion of the work and other administrative measures and actions in the accordance with the Law.

During 2012 and 2013 the construction inspection body conducted a total of 242 reviews in Budva, Ulcinj, and Zabljak. In the reporting period the construction inspection bodyissued 18 decisions on the prohibition of the works and demolition of structures, in the three respective municipalities. Finally, based on the established irregularities, construction inspection in the past two years submitted a total of 14 requests for misdemeanor proceedings[29].

Table 8: Details of the actions performed within the scope of Department of Construction Inspection in the municipalities of Budva, Ulcinj, and Zabljak, during 2012 and 2013

	2012			**2013**		
Municipality	Number of inspections	Number of adopted decisions on the prohibition of the works and decisions on demolition	Number of filed misdemeanor charges	Number of inspections	Number of adopted decisions on the prohibition of the works and decisions on demolition	Number of filed misdemeanor charges
Ulcinj	8	0	0	7	0	0
Budva	121	12	5	89	6	9
Zabljak	9	0	0	8	0	0

In one case in which the Construction inspection reviewed case files, certain irregularities were noticed in the process of construction in the Municipality of Budva, in which Construction inspection pointed and acted in accordance with its legal powers. This case shall be used as a case study. Through access to case files it was found that the construction of the hotel started 20.10.2012, after the issuance of a construction permit by

[29] Data obtained from the Administration for Inspection Affairs - Department of Construction Inspection - Information no. 0403/1 - 859/1-2, from 06.03.2014.

the Ministry of Sustainable Development and Tourism. The first activity of the Construction inspection body was dated 25.10.2012, and included a completed inspection on which there is a record made up of the five pages in which the inspector noted that the construction site should obtain some missing documentation, but it was not an obstacle to continue work on construction of the structure, and that documentation should be provided on the construction site within 10 days. The first inspection was attended by the assistant chief of the construction site. However in the months after the start of the construction of the structure, the P.D. Budva initiated administrative procedure against the Ministry of Sustainable Development and Tourism, based on the verdict of the Administrative Court dated 25.12.2012, which states that a construction permit annulment on the ground of the violation of the rules of administrative procedure, given that the person (the plaintiff), who was supposed to participate in the procedure as a party or interested person, was not given the opportunity to participate in the procedure. The court in its judgment, inter alia, found the following:

The principle of hearing the parties is one of the fundamental principles in the administrative procedure, and, pursuant to Article 8 of the Law on General Administrative Procedure, prior to the decision making, the party must be allowed to comment on the facts and circumstances that are important for making decisions. Article 135 of mentioned Law provides that a party is entitled to participate in the inquiry procedure and, in order to achieve objectives of the proceedings, to provide information and defend their rights and legally protected interests. In the case file, there is no evidence that the plaintiff participated in the procedure, or that he was allowed to participate. Respondent was required to enable the participation of the plaintiff in the procedure, and not, as it is stated in response to a complaint, to state its interest in the outcome of the proceedings and in the end to conclude that an explicit request to participate in the procedure was not set, while not appreciating the motion of plaintiff sent to the defendant 22.02.2012. Article 131, paragraph 2 of the Law on General Administrative Procedure prescribes for competent authority to summon all persons for which considers that can state their legal interest to participate in the procedure, so the defendant was required to call the prosecutor, because he certainly expressed an interest in the procedure.

The administration for Inspections Affairs on 17.01.2013 acting on the delivered verdict of the Administrative Court, ordered the Department of Construction Inspection to enter onto the the site, and complete an inspection for spatial protection to establish the facts. The construction inspection body went onto the site in 15.02.2013 and conducted an inspection, noting that the construction works were not performed on the construction of the structure and that the construction site gate is closed. The Ministry of Sustainable Development and Tourism issued a construction permit for construction by the decision from 01.02.2013. After nine months, construction inspection again visited the site and on 14.11.2013 conducted an inspection and prohibited further work on the basis of Art. 153,

paragraph 1, point. 2 of the Law on Spatial Development and Construction of Structures, as the construction of the structure was not carried out in accordance with the revised main project. Four days later on 11.18.2013, construction inspection again visited the site and conducted an inspection, during which it was determined that the investor did not suspend further work, and in the presence of on the construction site engineers, ordered to take other measures in the accordance with the Act. In 22.11.2013. a decision of the Administration for Inspection Affairs - Department of Construction Inspection was adopted, which prohibits the investor to carry out further work on the construction of structure. At the beginning of December, on the 12.06.2014. the construction inspection body again visited the site - stating that the revised main project is not done in the accordance with the preliminary design which is certified by the Ministry of Sustainable Development and Tourism, based on which a construction permit has been issued from 01.02.2013 year, so that the issued decision on the prohibition of the works of 22.11.2013 still remains in effect. Meanwhile on 17.01.2013 the Administration for Inspection Affairs submitted a request for initiating misdemeanor proceedings against investors and responsible persons, because the parties defied the prohibition of carring out further work. On 27.03.2013 after the elimination of irregularities found in the process of inspection, the Ministry of Sustainable Development and Tourism issued a decision with a new construction permit to the same investor for the reconstruction of the same object. Construction inspection concluded the administrative procedure on 04.02.2014.

8. *Analysis of the procedures before the Administrative Court*

The study included an analysis of the administrative procedures before the Administrative Court which is directly or indirectly related to the field of spatial development and construction of structures. Due to the specific matter it is grouped and analyzed according to the following administrative areas: the area of economic development, the area of inspection, and area of the local government. Detailed analysis of cases from all three areas was based on the grounds for disputing an administrative or other act, ie. the reasons for the complaint initiate administrative procedures, namely: the violation of rules of procedure; erroneous and incomplete facts; due to incorrect application of substantive law. Bearing in mind that, in accordance with Article 28, paragraph 1 of the Law on General Administrative Procedure, in administrative proceedings, the Administrative Court resolves at hearing or in closed session. The proceedings before the Administrative Court are analyzed on the basis of research conducted through direct insight into the decision of the Administrative Court. Through the analysis special emphasis is placed at violation of the principles of administrative procedure which are explicitly required by the Law on General Administrative Procedure.

a. The procedures in the area of economic development

Economic development in the practice of the Administrative Court of Montenegro covers a very broad and diverse thematic area which, inter alia, includes: spatial planning construction, residential area, condominium ownership, economic activity, roads, coastal zone, energy, spatial plans, protection of consumers and others. In the area of economic development, during 2012 and 2013, there were a total of 18 cases pending before the Administrative Court of Montenegro. Through this research four decision that were made by the Administrative Court over the past two years were analyzed. The Administrative Court in those decisions overturned decisions of the lower instance bodies due to the existence of violations of the rules of procedure (in one case) and the misapplication of substantive law (in the three cases).

Case 1: Violation of the rules of procedure

<u>Attitude of the Administrative Court:</u> "One of the fundamental principles of administrative procedure has been violated, the principle of hearing the parties, since the person who was supposed to participate as a party or interested person was not given the opportunity to participate in the proceedings. In the present case, Article 8 of the Law on General Administrative Procedure, stipulates that before making a decision, the party must be allowed to comment on the facts and circumstances that are important for making the decision".

The prosecutor had sought the annulment of the decision of the Ministry of Sustainable Development and Tourism who issued a construction permit for construction of a hotel in Petrovac to legal entities from Budva. The prosecutor stated in the claim that the construction permit for the construction of the hotel in which the registration of restitution was made was issued. The prosecutor also stated that the defendant did not allow the plaintiff, as an interested party, to participate in the proceedings, thereby he has committed a substantial violation of the rules of procedure. The defendant authority, in response to the explanation stated that restitution does not affect the legality of the decision, and as far as the participation of the prosecutor in the proceedings is concerned, said that the plaintiff has not sent an explicit request to be involved in the process as an interested party. Deciding the administrative procedure, the Administrative Court found that the complaint had basis and that by the adoption of the contested decision committed a substantial violation of rules of administrative procedure under Art. 226 paragraph 2, points 2 and 3 of the Law on General Administrative Procedure, as the person who was supposed to participate as a party or interested person, was not given the opportunity to participate in the procedure. In this case, one of the basic principles of administrative procedure was violated - the principle of hearing the parties - because the provision of Article 8 of the Law on General administrative procedure stipulates that before making a decision, the party must be allowed to comment on the facts and circumstances that are important for making decision. The provision of Article 135 of the aforementioned Law provides that a party is entitled to participate in the inquiry procedure and, in order to achieve objective of the procedure, to provide data and defend their rights and legally protected interests. Thus the defendant authority was required to enable the participation of the prosecutor in the procedure, so the court annulled the disputed decision because of the essential violations of the rules of the procedure, but did not engage in the assessment of facts and the application of substantive law.

Cases 2 and 3[30]: Misapplication of substantive law

Attitude of the Administrative Court: "Mismatch of construction permit with the planning document is not intended as a reason for its nullity, according to the Law on Spatial Development and Construction of Structures".

The Administrative Court, in the particular case, dealt with the administrative case of the Supreme State Prosecutor against the decision of the Ministry of Sustainable Development and Tourism, which rejected the prosecutor's proposal for the revocation of the decision through which a construction permit for the construction of residential-business structure was issued to the legal entity from Budva, relating to the part of urban plots and in accordance with the urban project "Rozino" in Budva. At the beginning, it

[30] These cases will be analyzed together, given that there is identity of parties thereto, and the subject matter is the same.

should be noted that Article 12 of the Law on General Administrative Procedure provides that, in order to protect the public interest, the State Prosecutor or other competent authority, may enter into an administrative dispute. The first verdict of the Court annulled the decision of the Ministry of Sustainable Development and Tourism, by which the prosecutor's proposal for the revocation of decision was rejected and it was indicated to the defendant that he could not apply the Law on Construction in evaluating the proposal of the Prosecutor ("Official Gazette of Montenegro", no. 55/00), and that he could not link the decision on the location with the decision on the construction permit. According to the Court, there was a need of evaluation of existence of conditions for the revocation of the decision on the construction permit in accordance with the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no. 51/08), with respect to the time of submission of proposal for the revocation of the decision on the construction permit and the time of its issuance. Disposition of that decision was contrary to the reasoning of the decision so it was not possible to determine its legality (violation of the rules of procedure referred to in Article 226, Paragraph 2, Item 7 in conjunction with Article 203 of LGAP).

In the execution of the mentioned verdict, the respondent authority issued a new decision that the Administrative Court also annulled by its second verdict, finding that the Ministry of Sustainable Development and Tourism has not acted on the comments given in the earlier verdict despite the fact that the obligation to respect the verdict is granted by Article 57 of the Law on Administrative Disputes. Namely, in the new decision, the defendant cites the provision of Article 101 of the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no. 51/08), and then concludes that Article 10 of the Law on Amendments to the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no. 34/2011) repealed section 101, indicating that the said provision was not part of the legal system at the time of that decision, and that thus it cannot be applied to a controversial case reasons of which do not qualify under Article 260 of the LGAP for the revocation of the decision on the subject the construction permit. However, the Court found that the above mentioned conclusion of the defendant authority is contrary to Article 170 of the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no. 51/08, 34/2011 and 47/2011), which provides that procedures commenced before the coming into force of this Law, in which no final decision was taken, shall be completed in accordance with the Law that was in force at the time when the procedure initiated. Thus, the defendant was obliged to assess the merits of the requests of the prosecutor in the accordance with the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no. 51/08), bearing in mind that the prosecutor filed the request in 2009.

The conclusion is that the prosecutor wrongly interpreted the substantive regulations or has not considered the date of filing of the request of the prosecutor, or filed prior to the amendments of the said law and since in the procedure a final decision was not made, the grounds for the request should have been judged according to the previously applicable law, the law that was in effect at the time of the initiation of the procedure, and not according to the law that was in force at the time of the disputed decision.

b. The procedures in the area of inspection

The Administrative Court, during 2012 and 2013, issued a total of 42 decisions in the field of inspection, of which 9 decisions were related to proceedings in relation to the referenced municipalities. In those 9 decisions Administrative Court rejected seven claims as unfounded and upheld decisions of the defendant authorities, while in the same period it annulled 2 decisions, both because of the violation of rules of procedure.

In seven cases, in which the claims were rejected as unfounded, prosecutors were ordered to conduct demolition of buildings constructed without a building permit by the Inspector for spatial protection (6 cases), and Construction Inspectors (1 case). Prosecutors, in favor of the claims, generally, disputed the legality of decisions of the defendant authority since there were erroneous and incomplete facts usually stating that: "work were necessary because the panel leaked"; "the stairs are the only access to the building"; "the prosecutor repeatedly tried to obtain a building permit from the authorities" etc. These are different types of structures, from an open terrace, through second floors at existing structures, to the reconstruction performed of the outer isosceles stairs with landing and walls that are in the function the staircase railings etc. In all these cases, the factual situation was determined on the basis of the record of inspection control which are usually supported by photographs and videos from the scene. On such findings of facts, in all cases, the substantive law was applied correctly, that is, the provisions of Article 149 and 150 of the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no.51/08, 34/11, 47/11).

The provision of Article 149 of the Law on Spatial Development and Construction of Structures, provides that the inspector checks whether the area is adequate for the construction of structure or installation of a temporary structure, whether a construction permit was issued, or approval referred to in Article 116 of this Law, while Article 150 of the same law provides, when it determines that the construction of structure is done without a construction permit, or structure of temporary character is set without the approval of Article 116 of this Law, the inspector has an obligation to protect the area and the authority to order demolition of the structure.

In two cases, as noted, the Administrative Court found a violation of the rules of procedure and annulled the decision of the lower instance authority.

Case 4: Violation of the rules of procedure

<u>Attitude of the Administrative Court</u>: "The reasoning of the original decision does not result in the decision given in the disposition, which is why there was a substantial violation of rules of the procedure, referred to in Article 226, paragraph 2.7 of the LAD".

The prosecutor sought annulment of the decision of the Ministry of Sustainable Development and Tourism, rejecting the prosecutor's appeal against decisions of the Administration for Inspection Affairs - Inspector of spatial protection, by which demolition of the structure under construction in the Municipality of Ulcinj was ordered. In the complaint it is said that it does not concern additional construction, but that the facility is there for 15 years, and that the object has not been identified, and it was not established whether the investor owns a construction permit for a residential structure at which the work is allegedly performed. Defendant authority, in response to a claim, maintained the reasons given in the disputed decision and suggested that the court rejects the claim as unfounded. Upon investigation of the Court, the respective claim was found as founded. Namely, the Court noted that Article 167 of the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", no. 51/08, 34/2011) stipulates that structures constructed without a construction permit until the date of force of the Law, which does not fit into the plan document, will be removed in accordance with the Law. According to the case file (the record), the prosecutor suspended works on the structure stating that it awaits the adoption of detailed urban plan and the removal of the object. The reasoning of the original decision stated that the construction of the structure started in 2011, or after the entry of the Law. However, such a conclusion, which depends on the ability to fit an object into the planning document is not supported by evidence, which is why the reasoning of the decision is not given in the accordance with Article 203, paragraph 2 of LGAP, and the explanation of the first-instance decision-making data does not match the decision given in the disposition, which is there was a substantial violation of rules of procedure referred to in Article 226, paragraph 2.7 of the LGAP.

Case 5: Violation of the rules of procedure

<u>Attitude of the Administrative Court</u>: "The subject of inspection should be able to propose and present evidence during an inspection in order to determine complete and accurate facts".

In this case the prosecutor contested legality of the decision of the Ministry of Sustainable Development and Tourism, by which the prosecutor's appeal against the decision of the inspector of protection area – Podgorica, was rejected. This decision ordered the prosecutor to demolish the existing building which is located on land parcel

____ KO Ulcinj, 12 cast AB the pillars of the inter floor reinforced concrete slab of the second floor. The prosecutor in the claim essentially stated that the procedure did not take into account the existence of a contract concluded with the Municipality of Ulcinj, with the purpose of financing the construction of a planning document. The existence of this contract and the promise that the facility will be legalized confirms that the plaintiff was not engaged in work on the house of his own. The prosecutor also indicated that the cadastral parcel number _____ KO Ulcinj, covered by urban plans and corresponding parcel number ___ DUP '"Pinjes II'', on which is planned construction of the building, which means that the building and the works can be legalized. The court found that the complaint is founded, and pointed out that in the case file, there is no evidence that the procedure of inspection, which led to the decision to demolish, was conducted in the manner provided for in Articles 13 and 27 of the Law on Inspection Control ("Off. Gazette of RM'' No. 29/03 and "Off. Gazette'', No. 79/09), which may mean that prosecutor in the procedure was not allowed to, in accordance with Article 11 of the same Law, propose and submit evidence in order to determine the complete the state of facts. This is especially because the contract on financing development planning document, signed between the Parliament of Ulcinj municipality and the prosecutor, was attached to the Court, and the annexes of the agreement, which was not the subject of review in administrative procedure. Because of violation of the rules, the Court upheld the claim and annulled the disputed decision.

c. The procedures in the area of local government

In the area of local government all 20 decisions that were made in the procedures related to the subject municipalities were analyzed. Administrative Court rejected as unfounded 11 complaints, while in 8 cases it approved the complaint and annulled the contested decision, namely: breach of the rules of procedure (3 cases); erroneous and incomplete facts (3 cases); failure to deliver to the Court case files (1 case) the defendant authority was ordered to decide on the request ("administrative silence"- 1 case).

Administrative Court dismissed four lawsuits by resolving the administrative procedure based on the complaints of the Supreme State Prosecutor of Montenegro. In all cases, the defendant authority rejected the appeal of inspectors for urban planning, urban inspection, Administration for Inspection Affairs, as filed by an unauthorized person.

Attitude of the Administrative court*: „*The defendant authority has correctly found that the urban inspector, pursuant to the provisions of the Law on Spatial Development and Construction of Structures, as well as the Law on Inspection regulating the procedure of supervision, duties and powers of the inspector, was not authorized to file an appeal against the decision made by his proposal".

In five cases, complaints have been filed against the decision which overturned the first instance decision and the case was remanded for retrial. The reason for the rejection of these complaints is that, by findings of the Court, the defendant authority, in all cases, was moving within the powers given to it under the provisions of Article 237, Paragraph 2 of the Law on General Administrative Procedure. The provision of Article 237, Paragraph 2 of the Law on General Administrative Procedure Act provides that, if the appellate authority finds that the shortcomings of the first instance proceedings would be eliminated faster and more cost-effective by first-instance authority, it will annul the first instance decision and remand the case to the first instance, on retrial. The most common reasons for annulment of the first instance decision are incorrectly and incompletely established facts and violations of the rules of procedure of the first instance authority. If the appellate authority establishes that there are serious violation of the rules of procedure referred to in Article 226, paragraph 2 of the LGAP, it will annul that decision on appeal, or ex officio, and return the case to the first instance, for retrial, except in the case of Article 226, Paragraph 2, Item 3 LGAP, where the Court can resolve the matter on its own and will remove substantial violation of the rules of procedure. After annulment of the decision, prosecutors are allowed to protect their rights and legal interests and to use legal remedies in new procedures. It should be noted that in all these cases, in addition to the prosecutor, as a party in the procedure appear interested parties (multiparty administrative matter), which, as a rule, given that they have different legal interests in relation to the prosecutor, are satisfied with the disputed decision.

In one case, the Administrative Court dealt with the decision of the administrative authority to stop the process, which was initiated by the prosecutor's request for a construction permit, until the end of legal proceedings pending at the Basic Court. It was questionable whether the first instance authority acted properly when it found that the submitted documentation for a construction permit for the upgrade is disputable, and whether this fact is the previous question discussed in the procedure before regular courts. The provision of Article 136 of LGAP provides that, when the authority conducting the procedure encounters an issue on which the resolution of an administrative matter depends, and when this issue seems to be an independent legal unit that can be solved by competent court or other authority (previous question), it can, under the terms of this Law, discuss the issue by itself, or cancel the procedure until the competent authority resolves the issue.

In the decision the court stated: "*It is right, in the opinion of the Court, that the view of administrative authority that the question of the validity of the decisions of the Assembly of condominium owners approving the execution of works on the reconstruction and upgrade of the residential or residential-commercial property, represents previous question. This is because of the Article 183, paragraph 2, line 10 of the Law on Property - Relations ("Official*

Gazette of Montenegro", no. 19/09), which provides that the Assembly makes a decision on the use of common areas of the building where the upgrade is done, or that area converted into an apartment, and Article 177 of the said Act, which regulates the right of upgrades in accordance with the regulations of the planning and Spatial Development. This is because Article 183, paragraph 2, line 10 of the Law on Legal Property Relations ("Official Gazette of Montenegro", no. 19/09), provides that the Assembly makes a decision on the use of common areas of the building where the upgrade is done, or conversion into an apartment, and Article 177 of the said Law, regulates the right of upgrade in accordance with the regulations of the spatial development and planning. Because of this, alleged act is part of the documentation required for issuance of a construction permit. A review of the decision is an independent legal unit which falls within the jurisdiction of other authorities, particularly in view of the provision of Article 187, Paragraph 3 of the Law on Legal Property Relations. It is true that the question of the validity of the decision is not one of those cases where the authority must cancel the procedure (Article 137 of LGAP), however, whether it will discuss such a preliminary question by itself or it will terminate the procedure, depends on the assessment of the authority that conducts the procedure".

Attitude of the Administrative Court*: *"Resolving previous question means the determination of the facts (on which authority bases its decision), and does not mean directly deciding about the administrative matter".

The court, in cases in which it adopted complaint and annulled the contested decision, did so because of: "silence of the administration", violation of procedure rules, erroneous and incomplete establishment of facts and the failure of delivering case files to the court.

Case 6: Silence of the administration

Attitude of the Administrative Court*: *" "In accordance with Art. 18, paragraph 2 of the LAD, the party may initiate a dispute if her/his request was denied, if the authority whose act is not appealable has not made a decision within 30 days or a shorter period of time prescribed by the Law, nor did so even after repeated request within a further period of 7 days".

In one case, the court dealt with administrative proceedings on the complaint due to "administrative silence"[31]. Namely, prosecutors filed a complaint to the court against the

[31] "In practice, it happens that administrative authority fails to decide on the request of the parties in a timely manner, even though that is mandatory. This situation is referred to, in the administrative - legal jargon, "administrative silence". In order to protect the parties from the negligent actions of who should decide on one of their rights and duties, there is a possibility that a party may initiate administrative procedure if her/his appeal had been rejected. This is a special form of administrative dispute, since in the complaint is not directed against a specific administrative act, but the court is asked to adopt such act by complaint". See more: "Judicial review of the legality of administrative acts - The administrative dispute", the Human Resources Administration of Montenegro, 2006.

chief administrator in Budva, due to failure to decide upon their request. The complaint alleges that in 29.12.2011., they filed the complaint for the annulment or revocation of an additional construction permit, issued by the Mayor of Budva, to the Ministry of Sustainable Development and Tourism. The Ministry, in 09.01.2012., filed letter informing them that their request, pursuant to Article 55, paragraph 4 of the Law on Administrative Procedure, was forwarded to the jurisdiction of the defendant - Chief administrator of Budva. The defendant, however, did not decide within the statutory time limit on their request, nor in the further period of 7 days after the repeated request of 18.04.2012. The Court found that the complaint is founded, following the response from the accused, having found the case file, according to the complaint, the answer to the complaint and attachments submitted with it. In the decision, the Court stated that, pursuant to Article 18, paragraph 2 of the LAD, the party may initiate an dispute if his/her request was denied, if the authority whose act is not appealable has not made a decision within 30 days or a shorter term prescribed by the Law, nor does so even after repeated request within a further period of 7 days. It is indisputable, in the opinion of the Court, that the Ministry of Sustainable Development and Tourism submitted the claim of prosecutors to the defendant, but the defendant did not, within the statutory period, or within a further period of 7 days after repeated request, decided on the request of prosecutors, which follows from the case. The court upheld the complaint and ordered the defendant to, within the given deadline, decide on the request of prosecutors.

In three cases, disputed decisions were annulled for violation of the rules of the procedure.

In the first case, the violation of the rules of the procedure was related to violation of Art. 203, paragraph 2 of the LGAP - because the reasons, given in the explanation of the disputed decision of the Secretariat for Spatial Planning and Sustainable Development of the Municipality of Budva, are not clear and complete and, given the facts of the case arising from the data in the file, do not lead to the decision given in the disposition. In the second case, the violations were related to art. 240, paragraph 2 of LGAP, because, according to the Court's attitude, the reasoning of the solutions did not contain legal reasons and regulations, and did not, given the established facts, lead to the decision given in the disposition, nor assessment of relevant allegations of the complaint. In this case, the Court found a violation of one of the basic principles of LGAP – the principle of the protection of citizens' rights and protection of the public interest (Article 5), pursuant to which, *the authorities in the conduct of the proceedings and the administrative proceeding, are obliged to ensure to parties that they protect and exercise their rights and legal interests more easily, taking into account that the exercise of their rights and legal interests cannot be at the expense of the rights and legal interests of other persons, or contrary to the lawfully established public interest*. Finally, in the third case, the Administrative Court has found a

violation of the rules of procedure relating to the violation of Art. 226, paragraph 2, item 7 of LGAP, taking the attitude that the reasons given in the reasoning of the disputed decision, issued by the Chief administrator in Budva, are unclear and incomplete and do not indicate the correctness of the decision given in disposition. The Court in this case also found a violation of one of the basic principles of LGAP - principle of providing assistance to the party (Article 14), according to which, *the authority is obliged to ensure that the ignorance and illiteracy of the parties and other participants in the proceedings will not be to the damage of the rights they are entitled to by the Law*.

In the three of analyzed cases, there was an annulment of disputed decisions in administrative disputes due to wrong and incomplete establishment of the facts.

In the first case, the decision the Chief administrator in Zabljak was annulled, rejecting the prosecutor's complaint against the decision of the Secretariat for Spatial Planning, Environment and Utility Activities – by which the prosecutor was ordered to, within 6 hours from the time of delivery of the decision, remove a wooden box placed without the approval of the relevant local authority on the public road on the part of the cadastral parcels ___ KM Zabljak I. The Administrative Court, ruling on this claim, concluded that from the reasoning of the disputed decisions *"there cannot be derived a reliable conclusion as to whether the removal is ordered due to lack of permit for its setting, or because, by the Plan on setup and construction of mounting temporary structures, it is not planned for the location for the installation mounting temporary facilities plan in the municipality of Zabljak in 2012 ("Official Gazette of Montenegro - Municipal Regulations", br.3/12), on the part of the public space which is consisted of aforementioned cadastral parcels, and that is why the reasoning seems contradictory and contrary to the situation in the case file. This is especially important when we keep in mind the indisputable fact that the prosecutor was issued the approval for the installation of certain temporary structures by the decision of the competent authority of the Municipality of Zabljak, just on the part of the subject cadastral parcels*". The Court ordered that the appellate authority will, in the accordance with the verdict, make a lawful decision in this matter, in a new procedure.

In the second case, a decision of the Chief administrator in Budva, by which the plaintiff`s request for a construction permit for reconstruction for upgrade terraces within the footprint of the existing collective residence was rejected, is canceled. The Court, finding that the complaint is founded, said that the reasoning of the disputed decision, relating to the situation in the case file and the reasons given in the same, is unclear. The Administrative Court took the view that appellate authority has violated the rules of procedure that could have affected the resolution of the legal matter, especially considering the fact that the defendant did not determine the facts and conditions stipulated in Article 170, paragraph 2 in the connection with Article 175, paragraph 1 Law on Legal Property Relations, which is why the Court annulled the disputed decision. The Court ordered that

the appellate authority will, in the accordance with the verdict, make a lawful decision in this matter, in a new procedure.

Finally, in the third case, prosecutor was ordered to remove the auxiliary structure - a barn, built on the part of Cadastral Parcels no____ KM Zabljak, which is owned by the Municipality of Zabljak, by disputed decision of the Chief administrator in Zabljak. In the specific legal matter, the verdict indicated to the defendant authority to, in the repeated procedure, remove the irregularities and uncertainties relating to the following: "*Considering a Decision on developing amendments to the Detailed Urban Plan of Zabljak, it is unclear how the first-instance authority finds that the auxiliary building - barn, built on part of the cadastral parcel No._____ and that the land, according to the planning documents, is coming the purpose, when in the mentioned parcel number ____ is not listed. It is also unclear how the defendant concludes that this auxiliary structure is in accordance with the provisions of Article 2 of the Decision on the construction of auxiliary structures in the municipality of Zabljak, when in the accordance with Article 4 of the aforementioned decision, auxiliary structure can be ground and maximum surface area up to 30 m^2, and in this case it is an object that has two floors*". The Court ordered that the appellate authority will, in the accordance with the verdict, make a lawful decision in this matter, in a new procedure.

CONCLUSIONS AND RECOMMENDATIONS

Based on the findings of CeMI during the monitoring of administrative procedures in the field of spatial development and construction of structures certain conclusions and recommendations can be made.

- The general assessment is that there is an optimal legal framework which is not completely aligned with the EU legislation but that the state will, through the process of negotiations with the EU, strive to secure gradual alignment of all existing laws and future legislation with the *acquis communautaire*. A great number of subjects are directly or indirectly included in the system of spatial development and construction of structures which makes the institutional framework in this area complex. Simplification of the procedure for citizens in the process of implementation of procedures at the local level meant increasing the responsibilities of the authorized entities of local government. This was not followed by the strengthening of administrative, technical and human capacities of the local entities authorized to implement given authorizations and activities in the procedures of provision of urban-technical requirement permits, construction permits, occupancy permits etc. Capacities of inspectors conducting supervision over spatial development and construction of structures are limited and must be improved.

In the following period it is necessary to further strengthen the legal framework and to harmonize it with the EU legislation and international standards. Moreover, it is necessary to strengthen capacities of authorized entities at the local level in terms of human, technical and administrative capacities, in order for them to adequately execute all of the responsibilities given to them by Law. Special attention should be directed towards strengthening the capacities of inspectors conducting supervision over spatial development and construction of structures where the priority is engagement of a greater number of expert individuals relating to inspection activities in the areas in question.

- The principle of decision making in first instance procedures based on requests for issuing construction permits is mainly followed by the entities of local government. However, there are certain situations where authorized entities conduct activities inefficiently, so that there were cases in municipalities in which procedures granting requests for issuing construction permits lasted for fifteen months (Ministry of Sustainable Development and Tourism), eight and a half months (Municipality of Budva – one case), twelve months (Municipality of Ulcinj – one case), fifteen months (Municipality of Zabljak – one case). Such examples are isolated examples in the practice of authorized municipal entities, and, as such, do not threaten the principle of decision making in a reasonable timeframe.

It is necessary to for all authorized entities to secure the proper respect for the principle of decision making in a reasonable timeframe in all procedures. This especially relates to meeting deadlines prescribed by the Law on Spatial Development and Construction of

Structures relating to decision making in first-instance procedures for issuing of an urban-technical requirements, construction permits and occupancy permits by local government entities.

- The Secretariats for Spatial and Sustainable Development in the municipalities of Budva, Ulcinj and Zabljak, have not developed their practice or properly fulfilled the responsibility of the publishing of: requests for issuing of urban-technical requirements; requests for issuing construction permits and issued construction permits, requests for issuing occupancy permits and issued occupancy permits, in accordance with the provisions of the Law on Spatial Development and Construction of Structures. An improvement in this area was achieved in the last couple of months of the reporting period by the Secretariat for Spatial and Sustainable Development in municipalities of Budva and Zabljak, however the Secretariat for Spatial and Sustainable development in the municipality of Ulicinj still fails to publish the decisions of the main administrators procedures implemented on the basis of complaints. The decisions of entities dealing with first-instance procedures in the municipalities of Budva, Ulcinj and Zabljak are not published on the website of the mentioned entities. The Ministry of Sustainable Development and Tourism fulfills the responsibility of regular publishing of its decisions and the supporting documents on their website. The Administrative Court follows the principle of public work – through the availability of information and by making the public aware of the decisions, procedures, legal attitudes, initiatives, propositions and all other questions related to the work of the court.

In the following period, the Secretariats for Spatial and Sustainable Development in the municipalities of Budva, Ulcinj and Zabljak, should establish a practice of making all documents related to the area in question available to public on their websites, in accordance with the provisions of the Law on Spatial Development and Construction of Structures. Positive advancements in the past months have been seen in the municipalities of Budva and Zabljak and should be continued in the following period. The practice of publishing decisions on the basis of complaints related to decisions of entities dealing with first-instance procedures should be developed by the Main Administrator of the municipality of Budva, the Main Administrator of the municipality of Ulcinj and the main Administrator of the municipality of Zabljak. Administration for Inspection Affairs should develop practice of publishing decisions on their website. The Ministry of Sustainable Development and Tourism should continue the established practice of regular publishing of all decisions and supporting documents on their website. The Constitutional Court should, in accordance with its year-long practice, continue to follow the principle of public work through availability of information and by making the public aware of the decisions, procedures, legal attitudes, initiatives, suggestions and all other questions relating to the work of the court.

- In the certain number of analyzed cases we noticed that the authorized decision making entities make decisions in which certain statements are incomplete and explanations of the decisions are extremely general. During the conducted research cases in which the decisions failed to contain data concerning the size of the urban parcel on the basis of which the construction for permit were granted. There were cases where the

decision did not contain data concerning the occupancy of the area of the parcel and/or it did not contain draft-planning documents on the basis of which the construction permit was granted. There were also cases in which the decision did not contain markings of the urban parcels but only contained markings of the cadastral parcels which are not a basis for construction. Sometimes the decision did not contain information relating to the document on the basis of which urban-technical requirements where issued. In addition, there were examples of decisions which contain incomplete information. Such examples are not in accordance with the Law on General Administrative Procedure and make the verification of the legitimacy of the implementation of the procedures difficult.

Entities authorized to make decisions in the administrative procedures in the area of spatial development and construction must properly follow the provision of the Article 203 paragraph 2 of the Law on the General Administrative Procedure. Explanations of decisions should contain detailed facts and reasons that were influential in the making of the decision on the basis of evidence. Moreover, entities authorized for decision making and officials should give special attention to stating all relevant facts in the statements and the explanations of the solutions.

▪ The parties right to complaint in the analyzed cases were respected. All analyzed decisions of entities of local government contain a guideline concerning the legal instrument, and legal instruction which indicates that parties can complain against the decision to the Head Administrator, a second-instance entity, within 15 days of receiving the decision. The decisions of the Ministry of Sustainable Development and Tourism contain typical legal instruction stating that the decision is final in the administrative procedure and that complaint against it is not permitted and that, through another complaint, one can only initiate administrative procedure before the Administrative Court within 30 days of the receipt of the complaint. In one of the analyzed cases, which is presented in this report, the Ministry failed to state which entity is authorized to conduct supervision over the work of this Ministry and which entity was authorized to evaluate legitimacy of the disputed decision in the specific case.

The practice of following of the right to complaint should continue in the future. In cases when there are legal questions to which the entity does not have the authorization to give a response, especially relating to questions of authorization in procedures of a specific type, it is recommended that the entities forward the initiative to the authorized courts (The Executive Court, the Supreme Court or the Constitutional Court) which will, by deciding on the concrete legal situation, advocate legal attitudes and opinions which are of importance for future unified implementation of the law and other regulations.

▪ Administration for Inspection Affairs conducts the work of inspectional supervision in the area of spatial development and construction of structures, within their legal authority. However, insufficient human capacities represent one of the main barriers for greater efficiency of the Administration of Inspection Affairs in activities relating to inspection supervision in the cases in question. This is especially true in the case of capacity to conduct construction inspection, currently there are 3 inspectors including the main inspector.

Strengthening of the capacity of the Administration for Inspection Affairs relating to implementation of authorizations of inspection supervision in the area of spatial development and construction of structures must be a priority in the following period.

- The practice of the Constitutional Court in the area of economic development, inspection supervision and local government, contain decisions in which the Constitutional Court, deciding on requests of parties in administrative procedure, takes legal approach which are significant in the implementation of the law and other regulations in this area.

It is especially important to consult the practice of the Constitutional Court in cases where the subject is related to the area of economic development, inspection supervision and local government, in which, due to violation of the rules of procedure, inaccurate or incomplete determination of facts or due to fallacious implementation of the fundamental right, there was refutation of the administrative or some other act. Such cases must be provide a guideline to the administrative entities or entities of local government during decision-making. Thus, the practice of the Constitutional Court must be used more frequently as a source.