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SPATIAL PLANNING AND CONSTRUCTION - RISKS OF CORRUPTION

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Study on Spatial Planning and Constructuon – Risks of Corruption

„The aim of planning documents is directed at economic planning and other development in the area with maximum preservation of natural resources. This also forms the basis of the concept of sustainable development which aims to ensure realization of today's needs using the resources up to the limit which allows their natural regenaration."[1]

[1] Quote taken from the Local study on location "The Priest's Field", K.O. Kuljace, municipality of Budva (Decision on adoption of the Local study of location "The Priest's Field", number: 0101-606/1, Budva, 05.11.2013.

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Introduction

The Center for Monitoring and Research – CeMI began with the implementation of the project "Monitoring of Administrative Procedures in the Field of Spatial planning and Construction" in the mid-2013 with the support of the Royal Norwegian Embassy. The aim of the project was to contribute to improving transparency, accountability, efficiency and to reduce the scope of corruption in the implementation of administrative procedures in the field of spatial planning and construction in Montenegro. The project, in the methodological and organizational sense, was implemented through the already established methods which CeMI developed within the seven-year implementation of the project "Trials Monitoring" in cooperation with the OSCE Mission in Montenegro.

CeMI provided the institutional support for the realization of this project by signing the Memorandum of Cooperation with almost all institutions involved in implementation of proceedings in the field of spatial planning and construction. Signing the Memorandum of cooperation with Ministry of Sustainable Development and Tourism, Administration for Inspection Affairs, Municipality of Budva, Municipality of Ulcinj and Municipality of Žabljak marked a step forward in ensuring the sustainability of project results. These results will aim to strength the role of institutions in providing adequate system of control and accountability in the implementation of procedures in the field of spatial planning and construction in Montenegro. Moreover, these activities created a basis of institutional support for further activities in monitoring of administrative procedures in all municipalities in Montenegro. It should be noted that CeMI was received well by the municipalities of Budva, Ulcinj and Žabljak, as well as by other institutions during the implementation of the project, and that the communication was conducted in smooth manner accordance with the provisions of the signed memoranda of cooperation.

Spatial planning and construction is one of the areas which underwent numerous reforms, both of the legislative and of the institutional type. The aim of these reforms was to remedy the problems in the implementation of legal framework which led to disrespect of the law, increase in the scope for corruption and creation of an atmosphere of systematic uncertainties. For these reasons, an idea of implementation of a project of this type was created – aiming to identify key problems and aiming to recommend models to overcome them through intense activities of monitoring of compliance with the international standards and national legislation on the side of institutions and individuals. Of course, these types of projects make sense only they are realized continuously and only if they monitor the effects of practical policy proposals. Therefore, CeMI will continue with the implementation of activities of monitoring of administrative procedures in the field of spatial planning and construction in the following period, with the intention to improve

monitoring activities in the methodological and organizational sense in most of municipalities in Montenegro.

The results of the project activities are presented in this study as well as in the Report on Administrative Procedures in the Field of Spatial Planning and Construction. The study primarily aimed to identify key risks of corruption and ways of preventive acting in order to reduce the scope for corruption, as well as to establish the mechanisms for detecting corruptive activities of the participants in the field of spatial planning and construction. At the end of the study, recommendations for normative and functional improvement of the system of spatial planning and construction is presented, which should contribute to identification and reduction of phenomena related to corruption.

1. Normative Framework

1.1 National Legislation

1.1.1. Law on Spatial Development and Construction of Structures[2]

The Constitution of Montenegro, article 16 paragraph 5, provides that the Law, in accordance with the Constitution, regulates matters of interest for Montenegro. The Law on Spatial Development and Construction of Structures was adopted in August 2008, with amendments following in 2011 and 2013. Having in mind the problems identified in practice that occurred during the implementation of earlier legislation which are particularly reflected in very high fees of the procedures, conditions and approvals necessary for issuing an urban-technical requirement and construction permits - a project of amendments began which resulted in the adoption of said amendments of the Law during 2013. The Law has great importance for the country and society as a whole, especially having in mind the importance of space as a national good. Reforms in field of spatial planning and construction are an integral part of the reform process in Montenegro, where the policies of spatial planning and construction are based on sustainable development, including provision of normative conditions for creation of a system in this area adequate for developed countries.[3]

The Law on Spatial Development and Construction of Structures foresees two basic groups of principles. First group of principles referred to in spatial planning is based on principles of harmonized economic, social, ecological, energetic, cultural development of the territory of Montenegro; sustainable development; incitement of balanced economic development of territory of Montenegro; rational use of spatial protection and natural resources; coordination with European norms and standards, etc.. Second group of principles relates to construction of structures which is based on: principle of protection of public interest, property and assets; coordination with European norms and standards; stability and durability of structures; health, environmental and space protection and protection of natural resources; protection of natural and technological disasters; protection from fire, explosions and industrial accidents; rational use of energy and energy efficiency; protection against noise and vibration.

The lack of Law is noticeable in the area of definition of key principles of spatial planning and construction which would give clear and precise instructions to all subjects which prepare planning documents and make decisions in administrative proceedings.

[2] The Law on Spatial Development and Construction of Structures ("The Official Gazette of Montenegro", br. 51/08, 34/11 i 35/13)

[3] See more in the Explanation following the Adoption of the Amendments of the Law on Spatial Development and Construction of Structures – Ministry of Sustainable Development and Tourism, May 2013.

1.1.2. Law on General Administrative Procedure[4]

The Law on General Administrative Procedure regulates the conduct of the state authorities and local authorities when deciding in administrative proceedings about the rights, obligations or legal interests of natural persons, legal persons or other parties, and while performing other tasks, as well as concerning the conduct of institutions and other legal entities who, within their public authority, resolve administrative matters. The Law stipulates the basic principles according to which the administrative procedures have to be implemented, specifically: **the principle of legality** which provides obligation for state authorities, organs of local authorities, and institutions and other legal entities acting in administrative matters to make a decision under the laws and regulation, and which stipulates that in situations when the entity decides on a discretionary basis a decision must be made in limits of authority and in accordance with the purpose for which the authorization is given; **the principle of protection rights of citizens and public interests** provides the obligation of entities to ensure protection and exercise of citizens' rights and legal interests, taking care that ensuring their rights and legal interests is not to the detriment of the rights and legal interests of other persons, or contrary to the legally established public interest. This principle provides the obligation of authorized entity to, when it finds out that a party or participant in the process have the base for exercising the right or legal interest, warn the party of this. Also, this principle stipulates that rules that are favorable to the parties be applied if these achieve the main goal of the law; **principle of efficiency** provides obligation of the entities dealing with the case, or deciding in administrative matters to provide quality and effective exercise and protection of rights and legal interests of natural persons, legal persons or other parties; **principle of truth** foresees obligation of full and proper determination of the facts and circumstances which are relevant for the adoption of legal solutions; **principle of hearing the parties** provides that before making a decision, the party must be allowed to comment on the facts and circumstances that are important for creation of the decision, while the exception to this rule is possible only in cases prescribed by Law; **the principle of evidence evaluation** stipulates that authorized person based on his own belief and conscientious and careful assessment of each particular evidence and all the evidence together, and based on the results of the whole process, estimates which facts should be taken as evidence; **the principle of autonomy in decision making** stipulates independence of the authority which conducts the procedure, to define the facts and circumstances on which regulation of a particular case apply and based on which it makes the decision within the authorities defined by law or other regulation. 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

[4] Law on General Administrative Procedure("The Official Gazette of Montenegro 60/03 from 28.10.2003, " The Official Gazette of Montenegro ", number 32/11 from 01.07.2011)

other law or regulation of the local authorities, as well as the duty of the authorities to prevent any abuse of the rights which parties has in procedure. Principle of two–instance in the decision making process provides a right of appeal against the decision made in the first instance, which may be withheld only in cases prescribed by the Law. Also, the appellation is not allowed against the first instance decision. **The principle of cost effectiveness of procedure** provides obligation of leading of procedure without delaying with as few costs for the party and other participants in the process, but in a way which allows collecting all evidence necessary for proper and complete determination of facts necessary to make a legal and correct decision. **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 to cause harm to the rights granted to them under the law.

1.1.3. Law on Inspection Control[5]

The Law on Inspection Control stipulates the basic principles which the entities implementing the Law must adhere to. **In accordance with the principle of prevention** by performing inspection, the control inspector primarily has a preventive function and undertakes administrative measures and actions when the preventive function cannot provide the purpose and aim of control. **The principle of proportionality** determines the obligation of inspector to undertake the actions and measures proportional with irregularities done, and to do so in way better for the controlled entity to achieve the goal and purpose of the inspection. Through **the principle of publicity** obligation is prescribed for the inspection body to inform the public about the facts and irregularities identified in the inspection procedure, which are related to the protection of life and health of persons or serious disruption of public interest. **The principle of independence** proclaims the independence of the inspector during the inspection, within the duties and rights established by the Law and other regulations. Art. 10 proclaims **the principle of protection of public interest** which stipulates the obligation of the inspector to conduct inspection control in accordance with protection of public interest, as well as interest of legal and natural persons when it is in accordance with public interest. This article provides the initiation and conduction of inspection control ex officio, and states that anyone can initiate a procedure of inspection control. **The principle of truth** proclaims the obligation of the inspector to establish facts and present evidence in the inspection procedure ex officio. **The subject of supervision**, in the process of inspection, may propose and present evidence in order to determine complete and accurate facts. Lastly, **the principle of subsidiarity** provides the possibility that certain matters of inspection

[5] The Law on Inspection Control ("The Official Gazette of Montenegro number. 39/03 from 30.06.2003, " The Official Gazette of Montenegro" number 76/09 from 18.11.2009, 57/11 from 30.11.2011)

can be regulated by a special regulation. In performing the inspection control, on issues which are not regulated by this Act or special regulations, the provisions of the Law on General Administrative Procedure are applied in a subsidiary manner.

1.1.4. Strategy on Fight against Corruption and Organized Crime 2010 – 2014

Strategy on Fight against Corruption and Organized Crime following Action Plan defines the strategic way, principles and aims in fight against corruption and organized crime, priority measures in establishing efficient system for fight against corruption and organized crime in public, private and civil sector, the role and responsibility of all subjects which is the base for efficient development of sustainable system for monitoring and evaluation of comprehensive national response on threats that corruption and organized crime brings.

The basic aim of the Strategy is to create precondition for prevention and sanctioning of corruption and organized crime at all levels through strengthening the institutional framework, the effective prosecution and legally banding decisions, prevention, education and established system for monitoring of Strategy and realization of the Action Plan for their further implementation.

The adoption of Action Plan on Fight against Corruption and Organized Crime for the period 2010-2014 began the second phase of implementation of Strategy on Fight against Corruption and Organized Crime for the period 2010-2014. This Action Plan operationalizes the priorities of Montenegro on the national and international plan of fight against corruption and organized crime. Those priorities are established with the mentioned Strategy, National Commission Recommendations, recommendations of international organizations and institutions, as well as relevant institutions of Montenegro, which continuously monitor the fight against corruption and organized crime, or represent until now unimplemented measures from the innovated Action Plan adopted in 2011. Action Plan provides the aims, measures, competent organs, deadlines and indicators for measuring the success of implementation of activities of competent ministries, administrative entities and institutions authorized for prevention and suppression of corruption and organized crime.

In accordance with the conclusion of the Government of Montenegro, No. 06-1522/5 from 19th July 2012 Minister of Justice issued the Decision on forming Inter-ministerial working group for creation of an Action Plan for Fight against Corruption and Organized Crime in the period of 2010-2014. The members of Inter-ministerial working group (in further text: working group) are representatives of national and nongovernmental sector,

and which, through their work, cover areas predicted by the Strategy for Fight against Corruption and Organized Crime[6].

In the Action Plan special attention was paid to urban development with special emphasis on improving the normative framework in the field of spatial planning and resolving issues of legalization and strengthening the capacity of monitoring on implementation of Law through establishment of the National Council on Spatial Development. Also, strengthening of administrative capacities and human resources of the Administration for Inspection Affairs in part of monitoring and control of area of spatial planning and construction is provided. As we are in the middle of the implementation period it is not possible to provide definite conclusions, but it is noticeable that a number of activities lag in implementation. An open question remains: Would these activities be implemented in 2014?

[6] Decision on education of the Inter-ministerial working group for development of the Action Plan for Fight against Corruption and Organized Crime 2013-2014 (number: 01-1607/12, from 10. 12. 2012.): as coordinator: dr Vesna Ratković, Director of DAI, for members: 1) Radule Kojović, Court of the Supreme Court, 2) Veselin Vučković, Deputy of the Supreme State Prosecutor, 3) Radmila Ćuković, Deputy of the Supreme State Prosecutor, 4) Jelena Radonjić, Parliament of Montenegro, 5) Merima Baković, Ministry of Justice, 6) Momir Jauković, Ministry of Justice, 7) Branka Despotović, Ministry of Finance, 8) Đorđije Ivanović, Ministry of Internal Affairs, 9) Tatjana Vujošević, Ministrry of Sustainable Development and Tourism, 10) Vesko Zindović, Police Force Administration, 11) Vlado Dedović, Center for Monitoring, 12) Vuk Maraš, Network for Affirmaiton of the NGO Sector, 13) Grozdana Laković, Mladen Tomović, Dalibor Šaban, Marko Škerović i Marita Tomas, DAI (Secretariat of the National Commission).

2. Practice in Montenegro – a study of three cases (Budva, Ulcinj, and Zabljak)

2.1. Development and Adoption of Planning Documents - the Method, Procedure and Subjects

Development and adoption of planning documents represents the base of quality spatial planning and construction in accordance with the Law. The satisfaction of citizens' needs and their undisturbed enjoyment of the right to property and as a part of this right their right to immovable property should be especially noted.

Because of the aforementioned reasons, this project put special emphasis on the level of coverage of urban land of observed municipalities with planning documents. Special indicators focused on respecting legal deadlines and procedures in making and adoption of planning documents. Adoption of planning documents must be in accordance with individual interests of citizens and the general, public interest of the municipality for the area for which the local spatial plan is adopted. Public interest should be viewed as a collection of all individual interests of citizens and the general interest should not be identified as interest of one or more than one personal interests. This means that the adoption of planning document must be initiated in accordance with the Law and that it should represent a regular procedure without frequent ad hoc amendments. When the extraordinary amendments become a rule space for corruptive acts and satisfaction of individuals interests is created, in which case perspective of general public interest is lost. We remind the reader that the basic principle of spatial planning is the principle of public interest and the principle of private interest but not in the cases when it is damaging to the public interest.

Finally, for the good quality and coordinated local planning documents there is a need of existence of precise and clear national document that will limit and direct spatial planning at the local level so that the general interest on the local and national level would be satisfied.

In order to comprehend the key basis for quality spatial planning on the territory of three municipalities, CeMI conducted research through a number of indicators that directly or indirectly indicate the state of affairs. The general conclusion of this research is the existence of uneven practice in three municipalities. While in some municipalities, in the period of observation, there was an overproduction of planning documents mostly through amendments and adoption of planning documents of lower rank, other municipalities showed reduced activity in the sphere of preparation of planning documents.

Table 1: The number and types of planning documents for the observed municipalities adopted in the period after the adoption of the current Law

	Plan on spatial and urban development of local government (PSUDLG)	Detailed urban plan (DUP)	Amendments of the detailed urban plan (ADUP)	Urban project (UP)	Local location study (LLS)
Budva	*	12	2	8	34
Ulcinj **					
Zabljak	1	-	***	-	1

* in power is SPM Budva
** According to the published annual reports and data on approved planning documents, it was not possible to precisely determine the number of adopted planning documents listed in the table or to determine is some of them where not adopted in accordance with the Law.
*** Adopted amendments to the DUP amending GUP

Characteristic for all observed municipalities is the fact that the current Spatial Plans - SPM and in most of cases General Urban Plans – GUP are developed and adopted in accordance with the previous laws. The SPM Budva is adopted in 2007 and amended in 2009, SPM Ulcinj is adopted in 1999 and GUP adopted in 1985. Spatial Urban Plan of the Municipality of Žabljak is adopted in 2011 in accordance with the implemented law while the municipality implemented the GUP or numerous amendments which were adopted before adoption of the applicable law. The mentioned Law was "replaced" with new Amendments of DUP of Žabljak adopted in March 2014.

The observed municipalities have fulfilled no obligations, or they did so partially, relating to the legal obligation from Article 162 and 162a of the applicable Law on Spatial Development and Construction of Structures. Specifically, these provisions oblige local administration to coordinate the local planning documents with the mentioned Law in a period of one year from the entry into force of this Law, or to adopt the Plan on Spatial and Urban Development before the 31st of December 2012. Thus, none of the observed municipalities fulfilled the legal obligation of harmonization and adoption of new planning documents.

Municipality of Budva adopted a number of planning documents for specific area (LSL) which lose the general development path and only partially arrange space which makes it difficult to have a plan of a balanced and sustainable development as a general principle.

Municipality of Ulcinj adopted a number of amendments of planning documents of specific area which can be interpreted as the opposite of the principle of sustainable development and existence of clear spatial planning policy.

Municipality of Žabljak, in a period since the adoption of the Law, did not adopted a sufficient number of planning documents of specific area, but in the period of 2013 and 2014, initiated a significant number of procedures of adoptions of planning documents.

Adoption of new amendments of existing planning documents must be based on horizontal and vertical alignment principles. This implies that the spatial plan of specific area must be in accordance with the spatial plan of the larger area, and in a case of non-compliance, the spatial plan of larger area would be implemented, and it implies that the planning documents of the same area must be coordinated with each other. Mutual coherence of planning documents of the same level is conditioned by the fact that the documents of spatial planning of larger area contain guidelines for preparation of plans of specific areas within its scope, and within this, tasks and issues which are supposed to be resolved by the plans of specific areas.[7]

It should be noted that in some cases there is a mismatch of planning documents in the legal framework under which they are adopted, or that in period after the implementation of applicable law amendments of planning documents which were adopted on the basis of an earlier law were conducted, despite the obligation to adopt a new one. Also, there are cases of adoption of planning documents of lower rank, on the basis of planning document of higher rank even if this document is not adopted in accordance with the new Law.

On the other hand, neither Government or Ministry of Sustainable Development and Tourism used the legal possibility in the case of three monitored municipalities to adopt the local planning document, bearing in mind the adverse consequences on spatial planning and non-compliance with legal obligation of local governments resulting from failure to adopt local planning documents[8]. Certainly, one of the most important principles of spatial planning is the principle of decentralization, but the provided mechanisms of control of the legality of local government and spatial protection work (illegal construction as a result of the lack of planning documents), when they are prescribed by the law, need to be implemented by the Ministry.

[7] Josip Bienenfeld, dipl. iur. Ministry of Environment Protection, Spatial Planning and Construction "*Development and Adoption of Spatial Plans in the Units of Local and Regional Government",* available at: http://www.agenti.hr/sadrzaj/info-agent/strukovni-forumi/forum-11/11-forum-Izrada-i-donosenje-prostornih-planova-u-jedinicama-lokalne-i-podrucne-samouprave.pdf

[8] Article 48 of the Law on Spatial Development and Construction of Structures

If we look at the data presented, and take into consideration all objective and subjective circumstances which influenced the inability of local government to fulfill their obligations, bearing in mind the fact that adoption of all planning documents is for the period of five years, there is an obvious inconsistency in spatial planning on the territory of three monitored municipalities.

Particularly noticeable is the lack of planning documentation adopted in accordance with effective Law on Spatial Development and Construction of Structures in municipalities of Ulcinj and Žabljak or adoption of great number of planning documents of lower rank in Budva.

On the other hand, in all monitored municipalities there is presence of illegal construction of structures, in areas urbanized with previous planning documentation and in non-urban areas, as well as in the areas of absolute prohibition of construction as is the case of National Park Durmitor.

If we talk about spatial planning in the essential sense then spatial planning should not be based on ad hoc amendments without periodic (5 years) adoption of planning documents in accordance with their force. In this situation, the general interest of local government is compromised as well as interests of individual citizens who are limited in the exercising of the right to real estate property.

2.1.1. Shortened Procedure for the Amendments on the Planning Document

Pursuant to the Article 53 of the Law, amendments to the planning document shall be made in the manner and under the procedure for the development and adoption of the planning documents established by this Law. As an exception, Article 53a provides the shortened procedure for amending planning documents which can be performed on the basis of agreements between the holder of the preparatory work and the interested user of space, with the agreement of the Government. This process is closely regulated by the Statute on Procedure of Adoption of Planning Documents through Summary Procedure, which, considering the importance of the procedure and its nature should not be the case. Instead of that, procedure of adoption of planning document should be regulated by law. Regulation of procedure by the Statute leaves space for usurpation of competence, particularly in the context of the shortened procedure implemented by the Ministry.

Trough shortened procedure users of the space have an opportunity to initiate and finance the change of a planning document.[9] In such a case, municipality and the user of

[9] In Article 56 in paragrah 4 of the Law, it is stated that financial resources for development of a planning document from the Article 53a of this Law are secured by the interested user of space.

space sign the agreement on drafting amendments on planning documents whose deadlines are shorter than the regular procedure.

The basic condition for the implementation of a shortened procedure is for it to be exclusively related to **amendments** of the existing planning document. On the other hand, as is noted above, and bearing in mind that the purpose of the shortened procedure is to help the investor and provide the facilitation of the procedure of amending planning documents, financing of amending of planning document is provided by investor.

Agreement on amending the planning document is based on the following conditions:

1) the planning document or part of a planning document covers an area of at least 10 ha;

2) there is an agreement between interested users about the legal property rights;

3) amendments are in accordance with the planning document of wider territory;

4) the parameters of existing planning document do not change substantially;

5) it maintains or increases the capacity of objects in the general interest.

In accordance with the nature of shortened procedure, and because of shorter deadlines and simplified procedure which is less control-susceptible, this procedure should be prescribed for spatial planning of small-scale, and not as is prescribed by the Law for planning document or part of it which covers at least 10ha. Bearing in mind the procedure of electing the processor of the planning document and the fact of financing the amendment on planning document by interested users of space it should be noted that shortened procedure opens space for possible abuse of the Law.

2.1.2. Alternative Sources of Funding the Creation of Planning Documents

Previously shortened summary procedure and ways of its funding represent an innovation introduced by amendments on the Law from 2013. However, the Law, even in the previous period, prescribed a possibility of funding of planning documents by interested users of space.

Bearing in mind the number of planning documents funded by users of space and whose implementation started in 2013, with special emphasis on Municipality of Žabljak (40% of procedures of planning documents' creation is funded by users of space), there is a clear trend of greater use of this source of funding of creation of planning documents.

In 2013, the Municipalty of Žabljak started with making six planning documents whose procedure of creation is funded by interested users (in the amount of 22,340,00€).

- Urban project **"Uskoci"**- tourist contents (area for which the made UP comprises space of **62.348 m2**)
- Urban project **"Pitomine"**- residental property (area for which the made UP comprises space of **11.126 m2**)
- Urban project **"Motički gaj"**- tourist resort (area for which the made UP comprises space of **7 913 m2**)
- Urban project **"Petrova strana"-** residential and tourist facility with ancillary facilities (area for which the made UP comprises space of **5008 m2**)
- Urban project **"Borje II"** - Tourist villas with central content (area for which the made UP comprises space of **5196 m2**)

The Municipalty of Budva in 2013 created one planning document, whose procedure of creation is funded by the users of space(in the amount of 25.000,00€).

- Local location study "Popova njiva"(the total area is 2,02 ha) – Ministry gave approval on draft plan.

The Municipality of Ulcinj failed to submit the required information on the procedures conducted in 2013 funded by the users of the space.

It is important to note that is necessary to provide transparency in these procedures, as well as in the process of conducting public procurement relating to the election of the processor of planning documents, regardless of the fact that the process of creating a planning document is funded by an interested user.

Particular attention should be paid to control of compliance of respected planning documents with planning documents of larger area, trough Ministry's approval as well as intensified control of urban inspection.

2.2. Procedure of Electing the Processor of Planning Document

The Law on Spatial Development and Construction of Structures prescribes as holder of preparatory work on adoption of planning document Ministry or the local government. However, the major holder of *creation of planning document is not at the same time and processor of plan, but it's a business enterprise or legal person or entrepreneur, what bearing in mind the nature of the document (Law) which is making in the procedure of electing processor, leaves open the question of procedure efficiency and its legitimacy.*

The planning document has a character of public document of subsidiary nature. Planning document is conducting the questions of public interest and it is adopted on the base of the Law on Spatial Development and Construction of Structures what makes them a subsidiaries acts. If we take into account these facts, a question remains of justification and legitimacy of entrusting this very important work to entities which are not public authorities or they have a public authority. Thus, at the level of the legal solutions can be pointed objection of justification and that only the solution shows good results.

2.2.1. Public procurement as a procedure of selection of processors of the planning document

According to data collected on the level of observed municipalities and according to the number of planning documents which were not created – this legal solution significantly slows down the procedure of creation of the planning document. Interviews with authorized planners indicate a skepticism relating to the procedures of the selection of processors and possibility of threat to the principle of loyal competition. All of this indicates a risk of corruption in services of local governments and in the business operations of the processors of planning documents.

Procedure of selection of processor is conducted in accordance with the Law on Public Procurement[10], depending on the type of procedure and the value bracket, prescribed by this Law. Since a planning document means a creation of a bylaw and transfer of authorizations to the processor, the implementation of provisions on public procurement in accordance with the value bracket (where creation of a planning document is equivalent to other types of services which can be a subject of public procurement where the only criteria of the processor is the price) does not provide for clear and certain way of qualitative selection of the processor.

In considering this, we should keep in mind the fact that subjects of creation of a planning document are not only the carriers of preparatory work on production

[10] Law on Public Procurement "the Official Gazette of Montenegro", 42/2011 from 15.8.2011.

(municipality and processor of planning document) but that they are also users of the space for which the planning document is being created. In this sense, risk of corruption in the process of selection of the processor and creation of planning document should not be observed in the relation of municipalities to the process, but also in relation of the processor towards the users of space.

As was already stated, the nature and the significance of a planning document should be reflected both in the form of its creation and in the adoption. In this sense, narrowing down the selection of processor to one and only criteria – the offered price, is not a good solution. Data on conducted public procurements in the observed municipalities which CeMI found also point to this. Namely, the accidental sample of ten analyzed cases conducted in public procurement in three observed municipalities, determined that the basic and only criteria of decision-making is the offered price and that the offered prices significantly deviates from the assessment of the value of public procurement.

Cases of public procurement for the selection of the processor of the planning document	Estimated value	The lowest price – accepted	Percentage of the lowest price in comparison to the estimated value
Case 1	40.000€	6.842,5€	17.1%
Case 2	60.000€	27.000€	45.0%
Case 3	28.000€	3.510€	12.5%
Case 4	28.000€	4.000€	14.3%
Case 5	72.600€	22.967€	31.6%
Case 6	10.500€	3.000€	28.6%
Case 7	20.000€	7.488€	37.4%
Case 8	21.000€	2.800€	13.3%
Case 9	14.000€	5.967€	42.6%

In addition, through access to the Portal of Public Procurement,[11] it was determined that there were no published documents for public procurement procedures for certain planning documents on the side of municipalities even though this is prescribed by the Law on Public Procurement.

[11] http://www.ujn.gov.me/

2.2.2. License Provision for the Authorized Planner

The Law on Spatial Development and Construction of Structures in Article 134 provides that the jurisdiction of license provision which determines fulfillment of requirements for performance of activities from Articles 35, 36, 37, 83, 84, 85, 106, 107 and 108 of this Law, is with the Ministry. One of the authorizations of the Ministry is also the keeping of records of provided licenses and seizure of licenses in relation to activities prescribed by this Law. This relates to the authorized planner as well and is the condition for a specific subject to be a processor of the planning document.

The Law defines the jurisdiction of the Chamber of Engineers of Montenegro. However, the Government of Montenegro adopted provisions which give the Chamber of Engineers the right to conduct activities related to the provision and seizure of licenses in the past three years.

We consider that it is not good practice to transfer authorizations specifically prescribed by the Law through lower legal acts to other subjects, especially to subjects who are not carriers of public authorization.

2.3. Public and Transparent Work of the Government Entities – Implementation of Legal Provisions

Transparent and public work of the government entity in the implementation of the Law on Spatial Development and Construction of Structures must be present in all procedures and all phases of procedures. We refer here to both spatial planning and the active participation of citizens in the development of planning documents as well as to the possibility of informing citizens concerning the exercise and protection of their rights in the area of construction of structures.

Legitimacy and responsibility of the local government in all of its work, with special emphasis to the area of spatial development, can be assessed through the level of work of local government which is public. There are three basic standards for work of local government to be public: *transparency in decision-making, participation of citizens and transparency in the provision of services*. It is these standards that determine if work of government can be considered responsible and legitimate and which limits the risks of corruption. The less these standards are fulfilled the greater the risk of corruption and the more work and decisions of local government lose on legitimacy.

Using criteria of determination of named standards given in the Guide on Responsible and Transparent Provision of Services on the Local Level[12] we will process these standards taking into consideration exclusively the area of spatial planning.

In order for the standards of *transparency in decision making* in the area of spatial planning to be fulfilled, local government should: Ensure that citizens, NGOs and private sector are informed concerning the procedures of decision-making in a way which is easily understandable and accessible; Ensure that all decisions must be justified from the point of view of value and interest for the municipality and its citizens and other interested parties; Ensure that all procedures of complaints and appeals are known to public, and ensure undisturbed access to information concerning them; Elected representatives, officials, civil servant and employees must report existence of conflict of interest and remove themselves form the process of decision-making; Daily agenda must contain time, day and place of meeting of the Parliament of municipality; public discussions, minutes and adopted decisions should be published on the website of the municipality and through media or in some other adequate manner; Determine criteria relating to decision-making and allocation of resources in advance; Ensure that decisions go through strict procedures: external (of audit) and internal control.

Participation of citizens is the most significant segment of the legitimacy of the work of local government and it depends on the fulfillment of the previously stated standard. In order for participation of citizens to be on a satisfactory level the local government should: Consult citizens in the decision-making process; Ensure citizens are informed; Seek, listen and respond to their opinions and salute return information concerning the experience of the beneficiary of services; Create possibility of participation of citizens in the planning and formation of the municipal services; Use diverse mechanisms to encourage participation of citizens in the decision-making process; Strengthen the role of local community in order to secure their greater influence and participation in the decision-making process on the local level; Build strong partnerships with local organizations (NGOs and private sector), as well as with other levels of government in order to provide services more efficiently.

Finally, the control of the work of local government through *transparency of provision of services* completes the process of action of the entities of local government. In order for citizens to have access to services of municipalities in the area of spatial development, local governments should: Secure information for beneficiaries concerning the type of services, procedures for provision of services, submission of requests/reports, deadlines for decision-making, criteria for decision-making, the appeal procedure and expenses of provision of services; Satisfaction of beneficiaries of services is ensured

[12] „Guide on Responsible and Transparent Provision of Services on the Local Level", Community of the municiplaities of Montenegro and VNG International

through an established practice of return information of the side of beneficiaries and respect for them.

The Law specifically provides, through a set of provisions, the responsibility of the authorized entity to publish all planning documents, programs of spatial planning and construction and reports on the state of spatial development, forms of requests, all decisions relating to spatial planning (concerning creation of planning documents...), granted UTR, construction permits, occupancy permits etc. on the website formed for the area of spatial planning and construction. CeMI conducted research with the aim to determine the level of public work of the entities of local government in the observed three municipalities in the area of spatial development, as is prescribed by the Law on Spatial Development and Construction of Structures. Even though the focus of this research was on the observed municipalities, the research looked at the Ministry of Sustainable Development and Tourism, taking into consideration their authorization in terms of license provision in the area of spatial planning as well as their acting as a second-instance entity in specific procedures.

Legal obligation of publishing specified documents on the websites of municipalities was determined by the Law on Spatial Development and Constructions of Structure on the 11th of August 2008, so that this research encompassed the period from September 2008 and actions of local government in this period. Taking into consideration the nature of procedures in this area, the size and content of documents following it, the significance of websites dedicated to this area is clear. All other media together cannot secure the level of accessibility and continuity of content as the website dedicated to spatial planning and construction. For this reason, CeMI put special attention on transparency of work of local governments through their websites in this research.

Observed local governments from the beginning of the implementation of the project did not form special websites nor a special portal (service) which would contain information and documents exclusively in the area of spatial development. It is necessary to mention that local governments, and primarily municipalities of Budva and Zabljak, after the initial indication on the side of CeMI's research team of deficiencies in terms of the legal provision to publish certain documents on the websites of local governments, began publishing documents. Unfortunately, this was not done to the extent that would completely fulfill the legal provision but there was advancement in this area. Moreover, websites of municipalities are not sufficiently accessible and documents and information relating to spatial construction cannot be found in one place but within different parts of the website. This can significantly affect accessibility of data needed to inform citizens and institutions and needed for their active participation in spatial planning and exercise of their rights and responsibilities.

In the continuation of this chapter, we will present the state of fulfillment of legal responsibilities by municipality in relation to publishing acts of local government in the area of spatial development.

2.3.1. Formed Websites for the Area of Spatial planning and construction

Municipality of Budva	2009	2010	2011	2012	2013	2014
Website for the area of spatial planning and construction (Article133)						No
Website for urban-technical requirements (Article 62 pg.1)	No	No	No	No	No	No

Municipality of Ulcinj	2009	2010	2011	2012	2013	2014
Website for the area of spatial planning and construction (Article 133)						No
Website for urban-technical requirements (Article 62 pg.1)	No	No	No	No	No	No

Municipality of Zabljak	2009	2010	2011	2012	2013	2014
Website for the area of spatial planning and construction (Article 133)						No
Website for urban-technical requirements (Article 62 pg.1)	No	No	No	No	No	No

As was already stated, local government, within existing websites, dedicated certain parts to publishing certain information and documents in the area of spatial development. During the process, it was difficult to monitor continuity of procedure for creation of the planning document through acts which municipality publishes on the website since they

can be found in different parts of the website. In opposition to the current state we should state efforts local government are doing in this period in the aim of meeting conditions for accessibility and publishing of all documents in the area of spatial development. In this sense, we point out the municipality of Budva which is in the phase of introducing GIS technology which will create conditions for formation of a spatial database.

2.3.2. Published Programs and Reports on Spatial Planning on the Websites of Municipalities, by year

Municipality of Budva	2009	2010	2011	2012	2013	2014
Program on Spatial Planning (Article 16 pg.7)	No	No	No	No	Yes	No
Report on spatial planning (Article 15 pg.4)	No	No	No	No	Yes	-

Municipality of Ulcinj	2009	2010	2011	2012	2013	2014
Program on spatial planning (Article 16 pg.7)	No	No	No	Yes	Yes	No
Report on spatial planning (Article 15 pg.4)	No	No	Yes	Yes	No	-

Municipality of Zabljak	2009	2010	2011	2012	2013	2014
Program on spatial planning (Article 16 pg.7)	No	No	No	No	Yes	Yes
Report on spatial planning(Article15 pg.4)	No	No	No	Do	Yes	-

Publishing program on spatial planning and reporting to the public concerning implemented activities relating to creation of planning documents gives possibility of control of the work of local government in this area and, more significantly, provides

information to citizens on solving questions affecting both their personal interests and the general developing interests of municipalities.

2.3.3. Publishing Decisions in the Process of Creation of Planning Documents

	Municipality of Budva	Municipality of Ulcinj	Municipality of Zabljak
Decision on creation of planning document (Article 32)	No	No	Yes
Proposition of the local planning document (Article 46 pg.5)	No	No	Yes
Decision on adopting planning document (Article 51 pg.1)	No	No	No
Planning documents	Yes (the old website)	Yes	Partly

On the websites of municipalities, it is possible to find adopted planning documents, but not those complete documents with supporting files. Municipality of Zabljak, as an exception to other municipalities, published decisions on creation of planning documents but only relating to planning documents whose adoption is in procedure.

2.3.4. Published Requests of Licenses on the Websites of Municipalities, by year

Municipality of Budva	2009	2010	2011	2012	2013	2014
Requests for granting of UTR and granted UTR (Article 62 pg.8)	*	*	*	No	No	Yes
Requests for granting of construction permit (Article 92 pg.3)	No	No	No	No	No	Yes
Granted construction permits (Article 94 pg.3)	No	No	No	No	No	Yes
Requests for granting occupancy permit (Article120 pg.4)	No	No	No	No	No	Yes
Granted occupancy permits (Article 121	No	No	No	No	No	Yes

pg.3)						

Municipality of Ulcinj	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Requests for granting UTR and granted UTR (Article 62 pg.8)	*	*	*	No	No	No
Requests for granting of construction permit (Article 92 pg.3)	No	No	No	No	No	No
Granted construction permits (Article 94 pg.3)	No	No	No	No	No	No
Requests for granting of occupancy permit (Article 120 pg.4)	No	No	No	No	No	No
Granted occupancy permits (Article 121 pg. 3)	No	No	No	No	No	No

Municipality of Zabljak	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Requests for granting of UTR and granted UTR (Article 62 pg.8)	*	*	*	No	Yes	Yes
Requests for granting of construction permit (Article 92 pg.3)	No	No	No	No	No	No
Granted construction permits (čl.94 pg.3)	No	No	No	No	Yes	Yes
Requests for granting of occupancy permit (Aritcle 120 pg.4)	No	No	No	No	No	No
Granted occupancy permits (Article 121 pg.3)	No	No	No	No	Yes	Yes

* Amendments of the Law on Spatial Development and Construction of Structures from 2011 prescribed the responsibility to publish requests for granting of UTR.

On the websites of all observed municipalities for the monitored period of around 6 years (2008 – 2014), exclusively lists of received requests and granted UTR were published, as well as granted construction permits, requests for granting and granted occupancy permits. This certainly does not represent fulfillment of legal provisions and is

not enough for full transparency of provision of services of local governments. An expectation to the previously stated practice is advancement in proceedings in municipalities of Budva and Zabljak. Namely, in 2014, municipality of Zabljak published granted UTR, construction and occupancy permits for the period of 2013 and 2014, without publishing requests. Especially positive example is municipality of Budva which, by forming a new website, encompassed publishing of all documents for 2014 with clear accessibility. Municipality of Ulcinj did not make advancement in this area so only lists of stated documents can be found on the website of the municipality.

2.3.5. Accessibility of the Form for Granting of UTR, Construction and Occupancy Permit

Forms of request for granting of UTR, construction and occupancy permits and available on the website of municipality of Budva only, specific forms of requests are available on the website of municipality of Ulcinj, while on the website of municipality of Zabljak citizens cannot find any of the forms of requests in the area of spatial planning and construction. This deficiency does not affect transparent of work of local government but it does diminish the accessibility of local government as a service to the citizens.

2.4. Participation of Citizens in Creation of Planning Documents

Access of the public should be enabled in all phases of the procedure of creation of planning documents. This means that citizens must have access to information as well as to the subject processing the planning document from the moment the decision is made concerning creation of the planning document.

The existing system which provides citizen-participation in the creation of the planning documents is limited exclusively to public discussion (Articles 42 and 43) after the creation of the planning document. The possibility of direct access to the processor of the planning document is missing in the legal text, both before and during the creation of the planning document, as well as during public discussion. Within paragraph 3 of the Article 42 it is provided that the carrier of preparatory activities is responsible to make a report on public discussion and submit it to the processor, who takes complaints and suggestions and builds them into the planning document properly.

Public discussion as is determined at the moment, does not fulfill the aim for which it is determined - inclusion of citizens in the decision-making process. In order for this aim to be fully completed, clear rules of procedure on submitted provisions and suggestions should be provided. Namely, it should be determined that the processor of the plan is obligated to submit to the carrier of preparatory works expert response to complaints and

suggestions in writing. This practice is present in the municipality of Budva which publishes responses of the processor to suggestions on their website.

Moreover, it is not clear what is the proper manner which the processor should use to build in complaints and suggestions of interested beneficiaries into the planning document.

It would be useful to prescribe that there must be public discussion once or multiple times before and during the creation of the planning document, independent of the public discussion which should follow the creation of the draft of the planning document. This is especially important if we take into consideration that the processor of the plan is an enterprise, legal person or an entrepreneur with whom citizens cannot communicate during and concerning the procedure of creation of the planning document even though the procedure can last for a long time, as would be the case when the processor is a state entity, an agency or a public institution. Municipality of Budva enables contact of citizens and processor of the plan during the period provided for public discussion but only shortly - for a couple of hours and not during all of the days of the public discussion. On the other hand, local government in municipalities Ulcinj and Zabljak enable citizens direct contact with the processor through organization of a presentation.[13]

Public discussion should last at least 30 days, and for planning documents of a greater range even longer. The current legal solution in the Law, Article 42 provides that duration of public discussion is 15-30 days with possibility of repeated public discussion. Observed municipalities, as a rule, publish in the minimum legal deadline, which is bad practice. Access to the websites of municipalities helped determine that they do not have the practice of publishing public calls for *repeated public discussions.* The Law does not prescribe responsibility of repeated public discussion and it is up to secretariats to asses whether the planning document, after the conducted legal discussion, is significantly different from the primary draft of the planning document.

We consider that there is a need to define the term „significantly different from the primary draft", in order for the term not to be differently and self-willingly understood. Moreover, there is a need to prescribe possibility to organize repeated discussion twice if there is need to do so.

[13] Article 90 of the Croatian Law on Spatial Development "*Citizens and institutions cooperate in the public discussion in the manner that they: have the right to access to public insight concerning the proposal of the spatial plan, ask questions during the public exposition of suggested solution, to which processors respond, orally or in writing according to the request of the judge of the public discussion, can write suggestions and complaints into the book of complains which always supports the proposal of spatial plan on which public discussion is being conducted, give suggestions and complaints into the minutes during the public exposition, direct the carrier of the execution written suggestions and complaints in the deadline determined in the call for public discussion."*

The general assessment for the observed units of local government (without municipality of Ulcinj considering there was a change in the management structure during the implementation of the project) is that the management and the employed in the local government indicate clear commitment and readiness to improve their work and achieve the greatest possible level of transparency, responsibility and efficiency in their work. In relation to all three criteria there is a lot to be done in the part of improving work of the units of local government and creating normative conditions.

2.5. Illegal Construction of Structures

In this part, special attention will be given to illegal construction of structures, which, to a great extent, devastate space and deviate from the general interest which is concretely as well as similarly and causally connected to inexistence of planning documents. Illegal construction of structures further affects non-consistency and non-evenness in the development of certain local governments in the area of spatial planning and construction.

In defining illegal construction we can start with the legal provision of the Criminal Code as well as from the general provisions of the Law on Spatial Development and Construction of Structures. In this sense, illegal construction is all construction done in opposition to the planning document and in the space for which no planning document was adopted and for which there is no previously granted construction permit or is built in opposition to a permit. Thus, illegal structure is not only a structure which does not have previously granted construction permit but also a structure built in opposition to the granted construction permit.

According to data, which by nature are unofficial and incomplete even though they come from the Ministry, over 100.000 structures were illegally constructed in Montenegro. CeMI, through its research, did not succeed in determining the exact number of illegally built structures on the territory of observed municipalities, but, through communication with local governments, found data indicating that the number is significant even though undetermined, that it is in the thousands. According to data of Municipality of Ulcinj on the territory of this municipality there is over 5000 illegally built structures (data gotten by comparing the number of connections to the technical network and granted construction permits, which leaves space to include those structures which are illegal in the sense of being built in opposition to the granted permit – in terms of augmentation of occupancy of construction land and levels of the structures.) Municipality of Zabljak has data from the conducted survey of illegally build structures from 2008 when the number of these structures was 1047 out of which 300 were within the borders of the National park Durmitor. In municipality of Budva they do not have data on illegally build structures.

Taking into consideration lack of records and procedures of control of the number of illegally built structures, and considering available data, it can be assumed that on the territory of these three municipalities, there are over 10.000 illegally built structures.

If we pre-suppose causes of such a degree of illegal construction we should indicate that a) significant number of planning documents on the level of observed municipalities is not adopted and harmonized with the law and that, in this way, by irresponsible acting on the side of local government, a space is created for illegal construction and b) lack of adequate social reaction in terms of solving problems of illegal construction.

The problem of illegal construction in three observed municipalities, CeMI looked at in accordance with the following aspects:

- Matching of structures built without construction permit into the planning documents
- Criminal-legal aspect of illegal construction
- Law on Legalization of Informal Settlements

2.5.1. Matching Structures Built without Construction Permit into the Planning Documents

The Law on Spatial Development and Construction of Structures in transitional and final provisions prescribes possibility of matching objects built without construction permit into the planning documents through a negative determination of such possibility. Namely, provision of Article 167 states that "*objects built without construction permit until the day of implementation of this law, which are not matched into the planning document, will be removed in accordance with this law.*"

Such provision is incomplete and unclear and leaves space for discretional understanding on the side of local governments. Moreover, it regulates exactly the matter which should be regulated through a special law on legalization of illegally constructed structures.

Firstly, it is not clear what is understood under a constructed structure before the implementation of the law. An entity and precise criteria on the basis of which it is possible to determine the degree of construction and whether it refers to dimensional orientation in space, rough construction or occupied structure which is not entirely completed, is not given.

This provision encompasses exclusively illegal objects built before the implementation of the law (September 2008). However, taking into consideration that there is no record of illegally built structures and the fact that this provision does not prescribe a survey which would determine illegally built structures, these issues and the determination of time of structure construction is left to the discretion of the entity leading the procedure.

In terms of ways of structures falling under possibility of "matching" it is unclear if this provision encompasses structures built in opposition with the granted construction permit, or only those structures built without a construction permit, taking into consideration the principle "who can do more can do less", that is, if it is possible to match the structure which has deviated from the construction permit, in terms of property size and level of structure.

Finally, the provision prescribes demolition of objects without construction permits, *not matched into the planning document.* The Lawgiver does not specify basic provisions in relation to the planning document in which illegally constructed structure should be matched either. In accordance with this, there is doubt whether this refers to the first adopted planning document for space on which illegally constructed structure is or to any planning document (which go through many amendments – in case of Ulcinj and Budva) in cases when the structure has not been removed in the meanwhile (or has been built in the meanwhile since we do not have record on illegally built structures). If this provision is correctly understood in relation to provisions on harmonization and adoption of planning documents, we can assume that illegally built structures will match the planning document which local governments must harmonize and adopt in deadlines (162 and 162a) proscribed by the transitional and final provisions. In this case, a question remains as to what happens if the local governments do not adopt planning documents in the legal deadline (which is mainly the case with the observed municipalities (there are no spatial-urban plan or lower planning documents)).

From the above it is clear that the current norm which gives possibility to match illegally constructed structures leaves space for corruption and uneven proceedings and before all creates legal insecurity by failing to clearly define the rights of the citizens.

If we look at the state in observed municipalities there is possibility of application of this provision without control, and taking into consideration given state in the part relating to creation of planning documents we can state that this is indicated by data from annual Report on the State in the Spatial Planning of municipality of Budva. According to this data, 75% of requests of citizens concerning amendments of planning documents related to legalization of illegally constructed structures.

On the other hand, there is a question of criminal-legal responsibility of citizens who illegally construct structures and equality of citizens before law in the most general sense. If it is enabled in this way for citizens to legalize objects and remove consequences of conducting a criminal act a question remains as to equality of citizens concerning criminal-legal responsibility as well as to the motivation of prosecuting bodies to process these criminal acts.

2.5.2. Criminal-Legal Aspect of Illegal Construction – Construction of Structures without a Construction Permit

The Criminal Code[14] prescribes that it will consider a perpetrator of criminal act for construction of structures a person who, against the provisions on construction of objects, planning and spatial development, *initiates construction of structures without previously obtaining construction permit or builds in opposition to the granted construction permit and technical documentation or in opposition to the decision of authorized entity stating forbiddance of construction.* There is provision of imprisonment for this criminal act from six months to five years. To this criminal act relates the criminal act of illegal connection of a construction site, object in construction or a structure which does not have construction permit, to technical infrastructure, that is inclusion or granting of permit for construction site to be included with the technical infrastructure (electrical energy, water, sewage and roads).

The condition relating to illegal construction from above shows a deficiency of active participation of prosecuting bodies in terms of suppressing this phenomena and a lack of special and general prevention. This is indicated not only by statistics on illegally constructed structures but also by concrete cases which indicate execution of this criminal act repeatedly. In order to have the full picture of the extent of work that needs to be done in order to prevent illegal construction we will present the available data of the State Prosecutor.

Annual reports of the Supreme State Prosecutor[15] do not contain completely separate data on criminal acts relating to illegal construction or they are not completely presented. However, data of the State Prosecutor indicate a trend of augmentation of reporting and processing criminal acts against environment and spatial development.

[14] Article 326a of the Criminal Code (Amendments, the Official Gazette of Montenegro, 40/2008-3**).**
[15] Reports available at: http://tuzilastvocg.me/index.php/izvjestaji-o-radu

Namely, in 2010, there were 631 reports of perpetrators of criminal acts form this part of the Criminal Code which mainly committed the criminal act of **building structures without a construction permit** – 306 persons were reported. From the total number of processed cases of criminal acts against environment or spatial planning the courts made decisions where only 14 persons were convicted to imprisonment, while there were unsolved decisions on prosecution of 114 persons.

In 2011, there were 610 perpetrators of criminal acts against the environment or spatial development, which is 3.32% less than in 2010. Perpetrators of criminal acts from this part of the Criminal Code mostly conducted the criminal act of **construction of structures without construction permit** - 339 persons were reported.

In 2012 the percentage of reported perpetrators for criminal acts against **environment and spatial planning** increased for **18,68%** in comparison to the previous year, which can be related to a greater activity of inspection entity relating to prevention of construction of structures without construction permits. Perpetrators of criminal acts from this part of the Criminal Code mainly **constructed objects without construction permit.**

Presented data indicate a trend of augmentation of processing cases of conducting criminal acts of construction without a construction permit, while on the other hand, data does not provide information on the number of processed perpetrators of the criminal acts from the Article 326b of the Criminal Code - criminal act of connecting illegally build structure to technical infrastructure (data on the number of illegally built structures in the municipality of Ulcinj was gotten by comparing the number of granted construction permits and connections to the technical infrastructure). Processing this criminal act would affect diminishing of the execution of the basic criminal acts from the Article 326a from the Criminal Code.

Taking into consideration the assumed number of illegally built structures, the number of processed perpetrators of the criminal act for construction of structures without a construction permit seems insignificant, which affects negatively the diminution of execution of this criminal act.

Taking into consideration the above mentioned statistics, we are concerned with the fact that there are almost *no cases of processing criminal acts of corruption in the area of spatial planning and construction of objects.*

2.5.3. Law on Legalization of Informal Settlements

Since Ministry of Sustainable Development and Tourism prepared the Bill of the Law on Legalization of Informal Settlements, in this study, we will look at it exclusively on

the level of principles, while CeMI will settle on the following proposal through the public discussion.

A very important matter in prevention of illegal construction and building as basis for diminishing of these phenomena, in perspective, is the adoption of the law on legalization. Such law should have been adopted earlier and at the same time with the adoption of the Law on Spatial Development and the Construction of Structures (and should not have been regulated through one provision – Article 167). The law should follow and specify procedure of legalization on the basis of the clearly determined state on the territory of the whole of Montenegro.

In order for this Law to achieve wanted and complete result; it must be based on multiple principles which will mostly protect public interest:

- Clear definition of the development policy in spatial development
- Adoption of all planning documents on the national and the local level
- Determination of the exact number and recording of illegally constructed structures
- Prescribe categorization of illegally constructed structures in accordance with the purpose and the effect to environment and spatial development
- Systematic harmonization of multiple legal documents with the Law on Spatial Development and Construction of Structures, the Law on Legalization of Informal Settlements, and the Spatial Plan of the National Part Durmitor, is needed.

In the situation when we have a committed criminal act of illegal construction whose consequences usually have irreparable consequences to environment and spatial planning (as is the case with building inside the borders of National Parts), lack of adequate social reaction to a great extent deepens the existing problem.

2.6 Role of Inspection Entities in Prevention of Corruption in Spatial planning and construction

In accordance with the provisions of the Law on Spatial Development and Construction of Structures is conducted through urban inspection, inspection for environment protection and construction inspection. Form the aspect of recognizing corruptive acts of special significance is supervision conducted by the urban inspection in whose jurisdiction is whether planning documents are created in accordance with this law; if this planning document is brought in accordance with this law; if the legal subject fulfills requirements for creation of the planning document prescribed by this law; if the offprint is created, that is if urban-technical conditions are granted in accordance with the planning documents; if the idea, that is the main project on the basis of which construction permit is

granted is created, that is revised in accordance with the planning document and urban-technical requirements etc.

Urban inspection has, during 2012 and 2013, determined 51 irregularities while conducting controls with authorized secretariats for spatial planning, on the basis of which the same number of suggestions to nullify construction permits was allowed. In addition, urban inspection, on the basis of determined irregularities, submitted 12 requests for initiation of misdemeanor procedure against responsible and official persons in the secretariats.[16]

Within analyzed cases, it was determined that during inspection supervision, more categories of irregularities in the work of the secretariat for spatial planning and sustainable development in the previous two years was present. Found irregularities relate to:

- Cases of granting of construction permits in opposition with provisions of the Law on Spatial Development and Construction of Structures in opposition with the planning documents;
- Cases of granting urban-technical requirements in opposition to the provisions of the Law on Spatial Development and Construction of Structures and opposite to planning documents;
- Cases of creation of the main project in opposition to the urban-technical requirements.

It should be noted that the urban inspection, in all cases in which it assessed that in the work of responsible and official persons exist elements of misdemeanor liability, submitted requests for initiation of misdemeanor liability to authorized misdemeanor entities. During 2012 and 2013 urban inspection submitted requests for initiation of misdemeanor procedure against responsible and official persons in 12 cases. During misdemeanor procedure, in 6 cases, there were determined misdemeanor liabilities of responsible and official persons in secretariats for spatial planning and sustainable development in the municipality of Budva and Zabljak. In one case, the official in the secretariat in the municipality of Budva has, after conducted misdemeanor procedure, been found not guilty. In four cases, requests for initiating misdemeanor procedure were denied due to obsolescence of the initiation of misdemeanor procedure.[17]

Through access to submitted cases of conducted inspection controls it is determined that in certain cases there was multiple cases of certain officers of local government in conducting stated misdemeanors. We consider that this type of proceedings clearly

[16] Data gotten from the Administration for Inspection Affairs – urban inspection – Information number 0402/1, from 12.05.2014.

[17] On the basis of Article 59 of the Law on Misdemeanors, a misdemeanor procedure cannot be initiated nor led if one year has passed since the day this misdemeanor was committed.

indicates misuse of official positions and possibility of corruptive behavior. In such cases, inspectors as well as those authorized in local government, must recognize illegal behavior and initiate disciplinary procedure and familiarize the state prosecutor with it, in the aim of assessment of elements of existence of criminal acts of corruption.

3. In place of Conclusion – The Most Common Forms of Risks of Corruption

Since conclusions are to a great extent incorporated into the previous analysis of specific aspects of state in spatial planning and construction, we will indicate the most important risks of corruption:

- Lack of systematic harmonization of the normative framework in the field of spatial planning and construction;
- Imprecise process rules in the Law on Spatial Development and Construction of Structures;
- Lack of adopted planning documents – of greater and smaller area;
- Lack of greater participation of public in the process of creation of planning documents and transparency of the process of creation;
- Misuse of official position in terms of using authorizations relating to spatial planning and granting of licenses;
- Illegal influence – using of official position to ensure implementation of works – of significant importance is transparency in relation to data on investor – family relations with those responsible in the local government;
- Misuse of the assessment relating to the effect to environment or a specific ambiance. Discretionary right in the process of deciding concerning harmonization of specific documents and fulfillment of requirements;
- Partition and pre-partition of urban parcels- necessary transparency;
- Adaptation of the planning document relating to the interests of beneficiaries of space in opposition to the public interest and harmonized and sustainable development of the whole spatial area, brining citizens into an uneven position;
- Shortened procedure as a possibility to amend planning documents;
- Potential investors appear as initiations of the creation of the planning document – danger from clientelism;
- Partial solutions in the creation of the planning documents;
- Frequent amendments of the planning documents;
- Change in the purpose of the land and structure – with the changes of the zones of construction land and purpose of objects;

- Procedures of selection and nature of processor of the planning document;
- Quasi-legalization of illegally constructed structures – unclear and insufficiently specific provisions of the law and lack of special law. Too big of a space for matching illegally constructed structures due to frequent amendments of the planning documents.

4. Recommendations

- *It is recommended to make amendments of the Law on Spatial Planning and Construction of Structures in order to remove deficiencies recognized by this study and establish a quality legal basis for a wholesome approach to spatial planning relating to spatial planning and solving problems of illegal construction;*
- *It is necessary to define basis principles of space development and construction of structures in the amendments of the Law, and especially the principle of sustainable development, principle of integral value of space, principle of public work in the process of spatial planning and construction, principle of exercising and protecting public and private interest;*
- *It is necessary to further regulate by Law processing provisions regulating questions of procedure of creation and adoption of planning documents and all other procedures prescribed by the law, especially in the part of the procedure of creation and adoption of the planning document by shortened procedure.*
- *Local governments must, as soon as possible, create planning documents beginning with a Spatial-Urban Plan and in accordance with it adopt planning documents of smaller area. Direct supervision of this process should be done by the Ministry in cases of untimely implementation of the adopted missing planning documents;*
- *Prescribe creation of planning documents to the jurisdiction of state entities where this authorization would be formed in accordance with authorizations on the national and regional-local level with potential possibility of verification of creation of planning documents together with legal persons and with full supervision and responsibility of those authorized in the Bureaus. The Bureaus should not be a part of local government and should be financed from the state budget;*
- *If the existing system which enables a business subject to be a processor of the planning document remains, special procedure of selection should be made. In addition, amendments of the Law on Spatial Planning and Construction of Structures should introduce forming of special Commissions which would conduct verification of vertical and horizontal harmonization of the suggested planning document;*
- *It is recommended to determine authorizations of the Chamber of Engineers of Montenegro relating to granting and seizing of licenses for conduction of activities*

prescribed by the Law on Spatial Development and Construction of Structures through the amendments of the Law and not Statutes of the Government;

- *Since local government did not form special websites for this area of spatial planning it is recommended for all municipalities to form a special portal (service) within their websites which will publish all documents relating to spatial planning and construction, in accordance with responsibilities provided by the Law, with the aim of unobstructed access of citizens to services of local government and protection of public and private interest. Strict adherence to legal regulations on transparency of procedure of local governments will significantly limit space for corruption, especially if we take into consideration its nature;*
- *It is recommended to adopt amendments of the Law on Spatial Development and Construction of Structures relating to public discussion in terms of improving requirements for participation of citizens in the procedure of the planning documents.*
- *It is necessary to approach prevention of illegal construction from preventive aspect, in terms of adopting all planning documents which will be available to citizens, and in this way ensure unobstructed usage of the right to property, as well as legal security of citizens and in this way provide final and clear framework in the area of spatial planning and construction. This, before all, should be done by respecting a justified and sustainable development in this area;*
- *In terms of existing illegally built structures it is necessary to adopt a Law on Legalization of Informal Structures which will be final and will be based on a clearly defined direction of development of all municipalities in Montenegro in the area of spatial planning and adopted planning documents. The proposed Law should remediate the current state respecting the principle of equality of citizens, especially taking care of the type and the purpose of the structures which will be encompassed by the legalization and of compensation for legalization. Adoption of the Law on Legalization of Informal Structures will not have full effect until all planning documents are adopted;*
- *It is recommended to establish cooperation of inspection entities and the State Prosecutor in terms of preventing illegal proceedings with emphasis on corruption in the area of spatial planning and construction through formalization of cooperation with agreements as well a trough formation of unified teams which would include the Police Force and the Agency for Anticorruption. Of special importance would be the education of urban inspectors, of construction inspections and inspectors for protection of environment in the field of recognizing corrupt activities;*
- *It is necessary to establish the National Council for spatial planning through implementation of measures from the Action Plan for implementation of the Strategy of the Fight against Corruption and Organized Crime for the period of 2013-2014 with the aim to monitor transparency of adopting planning documents, - monitor*

harmonization of the plans of lower order with those of higher order; - decide on complaints on harmonization of planning documentation; adopt opinions for the Government and the Parliament during adoption of planning documentation; publish all plans and other documents in their internet presentation; monitor decision-making of the Administrative Court in cases relating to planning documentation and to give recommendations for improvement;

- *With the aim to suppress illegal and corruptive acts and improve capacities of the Administration for Inspection Affairs, improve the administrative and technical capacities of the Administration – increase the number of newly employed officers and ensure necessary equipment and space for their work.*