



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



PROCESS OF BUILDINGS LEGALIZATION IN REPUBLIC OF NORTH MACEDONIA FROM THE PERSPECTIVE OF THE REAL ESTATE CADASTRE

SONJA DIMOVA

Agency for Real Estate Cadastre, Republic of North Macedonia

e-mail: s.dimova@katastar.gov.mk dimovasonja@gmail.com

**Paper prepared for presentation at the
“2019 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 25-29, 2019**

Copyright 2019 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.

1. INTRODUCTION

Objects constructed without licenses are generally known as illegal constructions, and are phenomena that have occurred immediately after the Republic of North Macedonia declared its independence. The obstructions pertaining to legal trade of the land under the influence of socialism (state ownership), typical for the period before the declaration of the independence (1991), accompanied by the accelerating migration of the population from rural to urban areas, high expenses associated with the regular construction of buildings, as well as the weak economic power of the population, to name but a few of the reasons contributing to the phenomenon of objects constructed without licenses, i.e. illegal constructions. In accordance with the legal regulations, objects that have been built without construction permit, or objects built contrary to the construction permit and beyond the planning scope, shall be considered as objects constructed without licenses.

The existence of these objects that have already been built without respecting the legal regulations cannot be disregarded, especially due to the fact that in larger cities, the number reaches a threshold of several thousand.

For purposes of resolving this problem, it shall be necessary to find an adequate legal solution/tool which shall define the manner of integrating these objects into the real-estate system, and acquiring the status of legal constructions. This is most adequate way of regulating the rights pertaining to the land where the illegal objects have been built, as well as the rights of the illegally constructed objects, thus contributing to achieving the optimum level of sustainable economic development. Having this in mind, the social aspect will thus be observed on one side (due to the fact that people building this category of objects can usually be included in the so called socially challenged groups), whereas on the other side, preconditions for good market economy/real-estate market will be created, mostly due to the fact that these objects will be legally sold on the market, they will be subject to mortgages and credits, etc.

In addition to this, defining good legislative procedure for legalization of illegal buildings/objects is not an easy task at all. However, the adoption of the Law on acting upon illegally constructed Objects of the Republic of North Macedonia is an attempt to tackle the problem caused by illegally constructed objects on the most appropriate way.

2. URBAN DEVELOPMENT AND REASONS FOR ILLEGAL CONSTRUCTION

Spatial and urban planning is a process which results in creation and adoption of plans, for purposes of providing urban and human perspective to the space, as well as for purposes of protecting and promoting the environment.

Spatial planning process is a procedure which is mainly considered to be of technical nature, whereby several important elements play central role, namely:

- Regional economic development;
- Systematic approach when effectuating the spatial planning, i.e. formal hierarchy of the spatial plans – meaning that low-level plans must not be contradictory to the high-level plans;

-Relation to and taking into consideration the manner of using the land for which spatial plans are being created.

Despite the efforts being vested in the process of spatial planning and urbanization, and despite organizing public presentations intended for the population, the true objective has not been achieved yet. People often decide to initiate a construction process without consulting the regulations, thus deliberately breaking the law. The reasons for this behavior might lie in the undeveloped urban plans in certain municipalities, which is a direct consequence of the unequal economic power of municipalities, weak economic power of the population, high prices for developing construction project, high expenses (referring to utilities) occurring due to acquiring the construction permit, undeveloped infrastructure next to the areas where the illegal constructions are located, as well as lack of information on the consequences from illegal construction.

The reasons behind the illegal constructions are usually due to some of the following factors:

- internal migration and poverty;
- lack of capacity for payment of the utility fees;
- lack of urban plans, lack of detailed plans;
- lack of information on the current regulations;
- housing on second degree for agricultural purposes, or for purposes of vacation or leisure.

Illegally constructed buildings/objects on state land and beyond the urban range of the cities are characterized by restricted/lack of infrastructure, unorganized/disordered construction, country houses, temporary constructions, and different quality of the construction. As far as the illegal constructions within urban space are concerned, they are usually objects constructed without observing the stipulated requirements in the construction permit, or they might be in the form of illegal extensions of objects and constructions in elite areas with good quality.

Due to a lack of simplified procedures and inexpensive access to property rights, the population is trapped in this illegal status and has no access to credits, which constitutes a social problem and major obstacle to the economic development of the country. Many of these objects, especially family houses with solid quality – even those being built without experts' assistance - are frozen assets and are considered to be dead capital (De Sotto, 2003). Such objects cannot be integrated into the real-estate market. This fact has enormous influence on the economic development.

Providing adequate access to property rights for all citizens through appropriate legal regulations, as well as improving the infrastructure by integrating these areas in the urban plans, will help solve this type of problem, and will facilitate the operation of the real-estate market.

The existence of illegal objects has detrimental consequences for the society which are evident from:

- insufficient revenues in the units of local self-government, generated only in cases when the construction of the object is done legally, and used for establishing appropriate infrastructure;

- illegal real-estate market, which is a reason contributing to the decrease of revenues of the state/ units of local self-government, generated from transactions, fees, taxes, etc.;
- additional expenses related to urbanization of the areas with illegal constructions;
- undefined land rights and illegal objects rights;
- environmental pollution, which is a result of the lack of or poorly built infrastructure in the areas where illegal objects are located, such as sewage network, waste water and fecal water network and undeveloped traffic network which is a precondition for utility waste management.

Statistical data from 2008 suggest that the total number of illegally constructed buildings on a state level approximates 300.000, 66% of which are buildings used for living, 31% are business premises, and 3% are buildings used for vacation and leisure.

3. SPECIFICITY OF ILLEGALLY CONSTRUCTED OBJECTS IN THE LAW ON REAL-ESTATE CADASTRE

Real estate cadastre is a public book which records the right to ownership and the other real property rights, real property rights data, as well as other rights and facts whose registration is defined by law.

The following categories shall be considered as real-estate in the real-estate cadastre: land, buildings, separate parts of buildings and of other objects, as well as real-estate registered in the cadastre in accordance with other laws.

The system of the real-estate cadastre in the Republic of North Macedonia has been determined in the Law on Real-Estate Cadastre, as well as in the bylaws adopted pursuant to the named Law.

For purposes of collecting, processing, maintaining, managing, using and distributing spatial and descriptive real-estate data, the Agency for Real-Estate Cadastre has established a geodetic-cadastre information system (GCIS). Apart from real-estate data, GCIS also contains data from geodetic networks, surveys, topographic maps, spatial unit's registry, and data on illegally constructed objects, as well as on temporary objects. Data on illegally constructed objects and on temporary objects are kept in different records, separated from the real-estate cadastre.

Data from the records on illegally constructed buildings and temporary buildings are published in the form of evidence list and sheet for temporary buildings.

The evidence list contains the following data on:

- Cadastral parcel on which the illegally constructed objects are located;
- Illegally constructed objects; as well as
- Owners of illegally constructed objects.

The sheet for temporary objects contains the following data on:

- Cadastral parcel on which the temporary objects are located;

- Temporary objects; as well as
- Owners of temporary objects.

The evidence list and sheet for temporary objects are not official documents that can be used to support the property right. Changes of the data referring to these objects that shall occur in future shall not be registered in the special records which are kept for such purposes. Data on illegally constructed objects and on temporary objects are collected only during the realization of the systematic survey, and thus changes that occur further on are not monitored.

As a result of the legal cadastral regulations envisaged in such a manner, restrictions are imposed, i.e. conditional hindering from the purchase and selling (transactions) of these objects, as well as from making them subject to mortgage, etc. This means that even though these objects have certain value, the value is not verified due to the fact that they have been built without observing the legal regulations referring to location conditions, payment of utility fees, etc.

4. ANALYSIS OF THE LAW ON ACTING UPON ILLEGALLY CONSTRUCTED OBJECTS (LAW ON LEGALIZATION)

The Law on acting upon illegally constructed objects is powerful tool in which a legal mechanism for solving problems with the illegally constructed objects or so called illegal objects has been defined. The objective of the Law is to determine a legal status for the illegal object, which would enable its registration in the public book for registration of real-estate rights, and its integration into the urban and planning documentation. Thus the country and the society shall provide an opportunity for actual valorization of illegally constructed objects, as well as their integration into the economic system.

4.1. Legalization procedure

The procedure for granting a legal status to the illegal object shall be implemented by the state body competent for spatial planning (Ministry of Transport and Communications) and the units of local self-government.

The state body competent for spatial planning shall implement the procedure which refers to objects of interest for the state, medical institutions providing tertiary health services, and objects for electronic and communication networks and means, whereas the units of local self-government shall implement the procedure for applications referring to objects of local interest, in accordance with the Law on Construction, as well as for objects providing primary and secondary health services.

4.1.1. Application for granting a legal status

The owner of the illegal object shall submit an application for granting legal status to the illegal object to the unit of local self-government on the area on which the illegal object has been built, or to the state body competent for spatial planning. The application may be submitted by:

- Natural persons, citizens of the Republic of North Macedonia,
- Legal entity registered in the Central Registry.

Foreign legal entities and natural persons may submit a request, provided that they meet the requirements for acquiring an ownership right determined by the Law on Ownership and Other Real Rights.

The application shall be accompanied by the following documentation: proof of citizenship, proof of established connection to the utilities infrastructure (bills), as well as geodetic report on determining the actual condition of the illegal object with property list for the land on which the object has been built. If the object does not have an infrastructure connection, the person filing the application must also submit a statement stipulating that the object has been built prior to the entrance into force of the Law, which must be verified by a Notary Public.

Illegal objects might be built on land owned by the person submitting the application, or on land possessed by the Republic of North Macedonia.

The application for illegal objects built on private land, the owner of which is another person, must also be accompanied by a contract for long-term lease, concluded with the owner of the land.

The Law also specifically regulates the manner of legalization of objects built on land transferred from previous owner, according to a purchase and sale contract. Such cases were typical for the socialist period when land trading was *de jure* forbidden, however, it was realized *de facto* via internal, joint contracts. Such land/parcels have been registered in the cadastre to the names of the former owners. The Law also stipulates the requirement that the person submitting the application for legalization shall use the land for more than 20 years following the day of concluding the contract. For cases like this one, the application submitted by the person must also be accompanied by a previously concluded contract and statement verified by Notary Public. The statement which the person shall give by assuming moral and substantial liability, shall confirm that the person has bought the land from the former owner.

4.1.2. On-site inspection

After receiving the application, a Commission established by the Minister in charge of the competent state body for spatial planning, or the city Mayor, shall perform an on-site inspection for purposes of determining the actual situation, and shall prepare Minutes containing technical data on the illegal object, and shall also take photos of the object in question.

4.1.3. Urban approval

The state body competent for spatial planning or the units of local self-government shall be obliged to determine the status of the illegally constructed object within 6 months as of the day of receipt of the application. This means that it shall be necessary to determine whether the conditions have been met, for purposes of integrating the illegally constructed object into the urban and planning documentation. Should the conditions be met, an urban approval shall be issued. Otherwise, the application for granting a legal status shall be rejected.

4.2. Illegal objects built on specific sites

In cases when the illegal object has been built on specific areas such as: national parks, archeological sites, mineral exploitation areas, areas which according to the urban plans are intended for objects of public interest, etc., the authority leading the legalization procedure shall *ex officio* acquire an approval by the competent ministry regarding the illegally constructed object. If the approval is not issued (it is negative), the illegal object shall be demolished.

4.3. Level of fees for granting a legal status

For purposes of being granted a legal status, the person submitting the application shall pay a fee in the amount of 1 Euro per square meter of the surface of the illegal object. The surface of the illegal object shall be determined in a geodetic report. This price is valid only for housing objects. For illegally constructed objects intended for different purposes such as: production, trade, tourism, etc., the amount of the fee shall equal the amount necessary for planning the construction land, which is calculated within the procedure for acquiring the construction permit.

4.4. Decision on granting a legal status

The entire procedure according to the Law on acting upon illegally constructed objects is finalized by the issuance of a Decision on granting a legal status, which shall confirm that the illegally constructed object has met the requirements for its integration into the urban and planning documentation, and for its registration in the real-estate cadastre. The Decision shall be issued by the authority leading the procedure. This means that for objects of local interest, private and public-private medical institutions providing primary and secondary health services, the Decision shall be issued by the unit of local self-government, whereas for objects of state interest, medical institutions providing tertiary health services, as well as for objects for electronic and communication networks and means, the Decision shall be issued by the minister of the competent state body for spatial planning.

4.5. Purchase of state-owned land on which an illegal object has been built

If the illegal object has been built on state-owned land, and if a Decision on legalization has been issued, according to which the object was registered in the public book, the owner of the object shall be obliged to submit an application for purchasing the construction land within 6 months as of the day of integration of the object into the urban and planning documentation. In cases when the owner of the object shall not submit such application, i.e. he/she is not interested in purchasing the land, a long-term lease of the land shall *ex officio* be granted in accordance with the Law on Privatization and Lease of State-Owned Construction Land.

4.6. Removal of illegal objects

Illegally constructed objects, for which a Decision for rejecting the application for granting a legal status shall be issued, shall be removed in accordance with the provisions from the Law on Construction.

For purposes of preventing possible abuse of the Law, the Decision for rejecting an application for granting a legal status shall also be issued in cases when it shall be determined that following the submission of the application, additional extensions to the illegally

constructed object, which is subject to legalization, have been performed, regardless whether the object has met the legalization requirements, or not.

5. REGISTRATION OF LEGALISED OBJECTS IN THE REAL ESTATE CASTRATE

The national legal regulation has been diligently prepared and stipulates the manner, terms and procedure for acting upon application for legalization, i.e. whole process of legalization.

The Law has been prepared as a result of the fact that the territory has been covered by the Real-Estate Cadastre, which is one of the conditions for realizing the legalization. Besides the buildings legalization, the process includes the legalization of the utilities infrastructure. The subject of legalization is only buildings / objects / communal infrastructure built before March 3, 2011.

For successful achieving of the goal, the deadline for legalization of illegal buildings was extended several times, with amendments of the Law on Acting upon Illegally Constructed Objects.

Since the enactment of the law in 2011, until now, the law has been subject to eleven changes. As is mention, the most of them were made in order to extend the deadline for submitting a request for legalization. At the beginning the deadline for request submission for legalization was set at six months from the day when the law was adopted i.e. August 24 2011. The practice shows that in that period it was impossible to complete the legalization process. In accordance with the last legal amendment from 2017, the deadline is extended until December 31 2018.

For objects/buildings that are legalized in the process of legalization, the competent authority shall issue a decision in accordance with item 4.4.

The adopted Decision and the geodetic report on determining the actual condition of the illegal object from point 4.1.1 are the basis for recording the object/building in the real estate cadastre.

The unit of the local self-government is delivered these documents electronically using e-cat system to the Agency for Real Estate Cadastre for object/building registration.

The building has registered in the ownership of the person which has a Decision for legalization. The Decision is a legal basis for registration of the property right of the object/building. The data from the geodetic report on determining the actual condition of the illegal object are imported in the digital cadastral map.

As the final result of the whole procedure, the Agency for Real Estate Cadastre for each registered legalized object preparing a property list.

In the property certificate in the part "other real property rights as well as any other rights whose registration is stipulated by Law" it is obligatory to record the following note "the object got a legal status in accordance with the Law on acting upon illegally constructed objects".

According to the database of Agency for Real Estate Cadastre (AREC), the number of legalized buildings/objects at the end of August 2018 is 206.364 objects. This is approximately 47% of the total number of illegal buildings on the state level. Most of them i.e. 66.560 illegal objects were legalized in the capital city Skopje.

The table below presented the total number of legalized objects/building till August 2018, by cadastral department (municipalities).

Cadastral department (city)	Number of legalized objects/buildings	Cadastral department (city)	Number of legalized objects/buildings
Berovo	2.379	Krusevo	949
Bitola	11.649	Kumanovo	10.064
Makedonski Brod	1.181	Negotino	2.526
Valandovo	1.081	Ohrid	5.204
Vinica	2.199	Prilep	14.724
Gevgelija	5.351	Probistip	1.537
Gostivar	7.242	Radovis	3.590
Debar	3.251	Resen	3.005
Delcevo	1.989	Sveti Nikole	2.866
Demir Hisar	716	Skopje	66.560
Kavadarci	4.999	Struga	3.527
Kicevo	4.435	Strumica	9.342
Kocani	6.496	Tetovo	9.440
Kratovo	1.475	Veles	8.926
Kriva Palanka	1.840	Stip	7.821

The trend of increasing the overall number of objects and everything the larger circulation of the real estate market can be seen from the increased number of received application and registered mortgages in the real estate cadastre. This trend includes the legalized buildings which are part of the real estate cadastre after process of legalization.

According to data from the annual reports of the Agency for Real Estate Cadastre, the total number of all types of applications received in real estate cadastre rapidly increased in 2011, for about 30% compared with received applications in 2008. This is also due to the start of the legalization process (figure 1).

Year	2002	2003	2004	2005	2006	2007	2008	2009
Number of received application	No data	No data	No data	323695	337040	389447	636798	651432
Year	2010	2011	2012	2013	2014	2015	2016	2017
Number of received application	838434	1160691	1027282	1040268	1154042	1205285	1165685	1010855

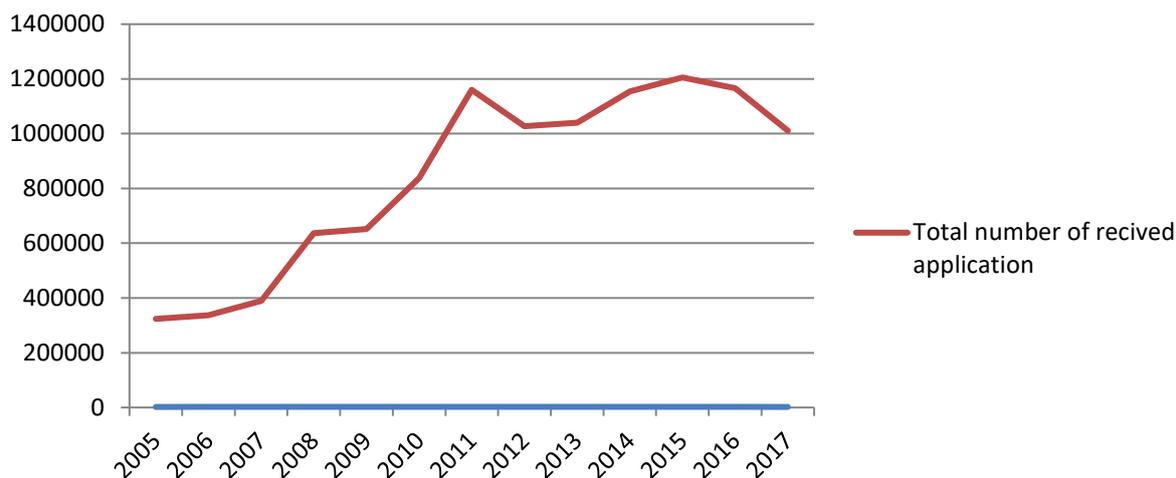


Figure 1 - Number of received applications per year

Especially is indicated fact that the number of registered mortgages in real estate cadastre are increasing in the period 2012 to 2015, where reaches a maximum level in 2015 with 18433 registered mortgages (figure 2).

Year	2002	2003	2004	2005	2006	2007	2008	2009
Number of registered mortgage	No data	No data	No data	2920	6159	8148	8573	6261
Year	2010	2011	2012	2013	2014	2015	2016	2017
Number of registered mortgage	9145	9803	10433	13000	17496	18433	14486	9325

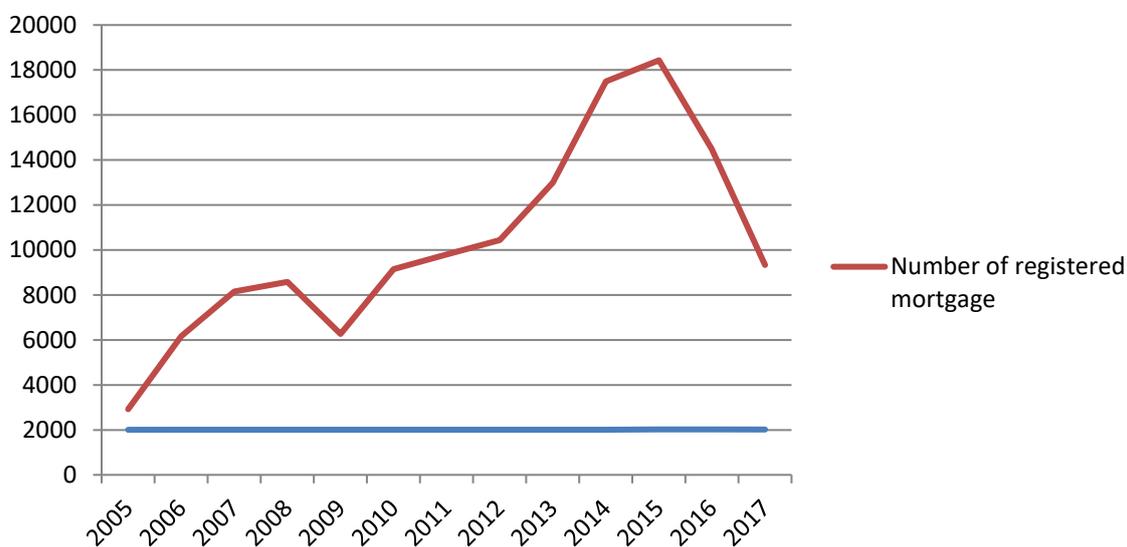


Figure 2 - number of registered mortgages per year

6. CONCLUSION

The analyzed legal measure has an economic aspect apart from the social aspect, as it supports persons that were not able to legally build their objects on one side, but on the other, it provides an opportunity to legally perform transactions in reference to the objects.

It could be said that the law for legalization support the citizens to legalize the illegal objects from happening, considering:

- Simple application,
- Transparency for the procedure;
- Decentralization and inclusion of the local self-government in the implementation;
- Encouraging citizens to realize the procedure through defined and acceptable prices;
- Protecting separate and specific areas; as well as
- Mapping objects/buildings within the legalization process.

The process of legalization is significant and contains innovative procedures which allow creation of legal ambient on the functioning of real-estate market and mortgages.

With implementation of the Law, this area is regulated, the economic growth of the country is accelerating, and the conditions for development and support of domestic and foreign investments is created.

REFERENCES:

Chryssy Potsiou, Project WB-Real estate cadastre and registration, Study on Illegally Built Objects and Informal Development in Republic of Macedonia, 2009

Chryssy A Potsiou, Informal Urban Development in Europe-experiences from Albania and Greece, Copyright © United Nations Human Settlements Program (UN-HABITAT), 2010

Law on Acting upon Illegally Constructed Objects (Official Gazette of the Republic of Macedonia No. 23/2011, 54/11, 155/12, 53/13, 72/13, 44/14, 115/14, 199/14, 124/15, 129/15, 217/15, 31/16 and 190/17)

Law on Real-Estate Cadastre (Official Gazette of the Republic of Macedonia No. 55/13, 41/14, 115/14, 116/14, 153/15, 192/15, 61/16, 172/16 and 64/2018)

Annual Report on the work of the Agency for Real Estate Cadastre from 2011 to 2017 year
<http://www.katastar.gov.mk/en/documents/annual-reports/>