

CURBING OF ILLEGAL CONSTRUCTION OF FACILITIES IN SUSTAINABLE CITIES AND COMMUNITIES

VELIMIR RAKOČEVIĆ,¹ ALEKSANDRA RAKOČEVIĆ²

¹ University of Montenegro, Faculty of Law, Podgorica, Montenegro
veljorakocevic@yahoo.com

² Basic Court in Podgorica, Podgorica, Montenegro
aleksandrajovanovic417@gmail.com

The subject of research is environmental endangerment by unsustainable space management. The aim is to point out the harmful consequences of the irrational consumption of natural resources due to the overdimensioning of construction areas. The research results show that Montenegro has been unsuccessful in fighting the problem of illegal construction and legalisation of these buildings for over thirty years. Official data from state institutions report approximately 100,000 illicit buildings in Montenegro. To protect the environment, the state has prescribed three new criminal offences, such as construction of an object without registration and construction documentation, construction of a complex engineering object without a construction permit and illegal connection to the infrastructure. The Law on the Regulation of Informal Buildings and the Criminal Code are not implemented in a legally valid manner, and the penal policy does not act as a disincentive while the level of devastation of space increases.

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OMEJEVANJE NEZAKONITE GRADNJE OBJEKTOV V TRAJNOSTNIH MESTIH IN SKUPNOSTIH

VELIMIR RAKOČEVIĆ,¹ ALEKSANDRA RAKOČEVIĆ²

¹ Univerza v Črni Gori, Pravna fakulteta, Podgorica, Črna gora
veljorakocevic@yahoo.com

² Okrajno sodišče v Podgorici, Podgorica, Črna gora
aleksandrajovanovic417@gmail.com

Predmet raziskovanja je ogrožanje okolja z netrajnostnim ravnanjem z okoljem. Namen poglavja je opozoriti na škodljive posledice neracionalne porabe naravnih virov zaradi predimenzioniranosti gradbenih območij. Rezultati študije kažejo, da se Črna gora že več kot trideset let neuspešno bori s problemom nedovoljenih gradenj in legalizacije teh objektov. Uradni podatki državnih institucij kažejo, da je v Črni gori približno 100.000 nedovoljenih gradenj. Država je zaradi varstva okolja uvedla tri nova kazniva dejanja, in sicer gradnja objekta brez registracije in gradbene dokumentacije, gradnja zahtevnejšega inženirskega objekta brez gradbenega dovoljenja in nelegalna priključitev na infrastrukturo. Zakon o ureditvi neformalnih gradenj in Kazenski zakonik se ne izvajata pravno veljavno, hkrati pa kaznovalna politika ne deluje destimulativno ob povečevanju opustošenosti okolja.



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1 Introduction

The concept of sustainable development is a complex phenomenon that encompasses various aspects of state and social development without harming the environment. The United Nations defines sustainable development as development that meets the needs of today's society without compromising the ability of future generations to meet their own needs (United Nations General Assembly, 1987). Earth's development should be based on the preservation of natural capital, such as water, air, and land, ensuring a balance between human activity and nature's ability to renew itself. To sustain human life today and in the future, every effort must be made to protect the environment and preserve natural resources. Addressing global warming is also essential (United Nations General Assembly, 1987). In addressing the issue of sustainable development, any piecemeal approach is inadequate; instead, an integral approach is necessary to sustain it. This entails economic, social, technological, and cultural development aligned with environmental protection needs and improvements, enabling current and future generations to meet their needs and enhance their quality of life (Adams, 2006). The capabilities of nature are finite, and it can only satisfy some of the needs of a consumer society. This is evident in environmental degradation and resource overexploitation. These detrimental processes will not contribute to improved quality of life or human health. Hence, the need to strike a balance between ecology and economic development has long been emphasised to alleviate environmental pressure and create more humane living conditions (United Nations General Assembly, 1987).

At the end of the last century, significant international bodies such as the United Nations adopted numerous conventions, declarations, and resolutions to protect the environment and promote sustainable development. These include the Rio Declaration on Environment and Development (United Nations General Assembly, 1992) and the United Nations Framework Convention on Climate Change (United Nations, 1992). Sustainable development is overseen and directed at the global level by the United Nations, with national subsystems implementing sustainable practices through effective regional and global cooperation. Human activity has led to a destructive attitude toward nature, deforming the climate and environment. Excessive pollution of land, flora, fauna, air, and water has seriously threatened the environment. Some authors rightly point out that humans are the cause of all

environmental threats and that they alone can solve the problems of pollution and environmental damage (Barbier & Burgess, 2017).

The uncontrolled exploitation of natural resources accelerated technological development, and the pursuit of profit during the 20th century have harmed the environment. Consequently, environmental protection has become one of the most important aspects of development, and preserving the environment has become the hallmark of states that are concerned about future generations (Šekarić & Kostić, 2011).

ISO 14001 is an internationally accepted standard that enables the implementation of environmental management systems in organisations. This standard was created to establish a balance between maintaining profitability and reducing negative impacts on the environment. Successful experiences of organisations show that implementing an environmental management system can reduce waste management costs, negative environmental impacts, and ecological incidents. Establishing legal certainty, i.e., compliance with environmental regulations, and raising social-ecological awareness are also essential (Janković, 2011). In an age of heightened environmental consciousness and increasing global challenges such as climate change, biodiversity loss, and resource depletion, organisations have a pivotal role to play. ISO 14001 offers a structured approach for businesses to address these pressing concerns. By adopting this standard, organisations signal a commitment not only to regulatory compliance but also to ongoing environmental improvement. This proactive approach to environmental management can result in tangible benefits such as reduced waste, energy conservation, and cost savings. The organisation shall determine external and internal issues that are relevant to its purpose and that affect its ability to achieve the intended outcomes of its environmental management system. Such issues shall include environmental conditions being affected by or capable of affecting the organisation (International Standard, 2015).

Human activities that injure, destroy, damage, pollute, or endanger the environment result from the conscious omission or non-application of rules, technical instructions, and standards in handling numerous dangerous sources of energy and raw materials. This includes the handling or otherwise dealing with destructive devices that create conditions for the risk of accidents of various types, scopes, and dimensions, affecting a particular space and everything in it, within the zone of the

danger's effect. Such activities, whether by individuals, groups, or entire countries, constitute illegal, prohibited, and punishable behaviour or torts (Jovašević, 2017). Because all aspects of unlawful behaviour in the arrangement, preservation, improvement, and protection of human living and working environments, both broadly and narrowly, can be considered environmental crimes.

Green criminology (Lynch, 2020; Lynch et al., 2019) focuses on analysing environmental crime based on criminal charges and judgements. Despite the growing interest in environmental and green crimes, little is known about these offences and how environmental offenders are punished in criminal cases. Much of what is known about the punishment of environmental offenders comes from studies that are now more than 25 years old. Furthermore, many studies rely on aggregated data from the United States Environmental Protection Agency, which provides information about these cases nationally but does not address potential variability in the punishment of environmental criminals in any state (Lynch, 2021). For thousands of years, humans have done things to the environment that have fundamentally transformed local landscapes and regional biodiversities. From bringing plants and animals from one region to new parts of the world to polluting rivers and seas with industrial outfall, filling land and soils with human refuse, and intentionally burning fires in particular local biospheres, ecological change has been part and parcel of how humans have interacted with each other and with nature for millennia. Not all such activities have been viewed as harmful, nor has the transformation of local environments always been seen as a negative (White & Heckenberg, 2014).

For mainstream criminology, restrictive notions of police and policing by state institutions and of crime as being solely determined by criminal law dominate. Yet Lynch and Stretesky (2014) highlight that environmental harm constitutes a major threat to human survival, and that green crimes such as pollution constitute a substantial threat to human life yet are often ignored by mainstream justice systems. Accordingly, green criminology extends beyond the focus on street and interpersonal crimes to encompass consideration of “the destructive effects of human activities on local and global ecosystems” (South & Beirne, 1998, p. 147). In doing so, green criminology considers not just questions of crime as defined by a strict legalist or criminal law conception (Situ & Emmons, 2000), but also examines questions concerning rights, justice, morals, victimisation, criminality, and the use of

administrative, civil, and regulatory justice systems. Green criminology also examines the actions of non-state criminal justice actors such as non-governmental organisations and civil society organisations and the role of the state as a major contributor to environmental harm.

Green Criminology also examines mechanisms for disrupting and preventing environmental crime and reducing harm to non-human animals and the environment (Nurse, 2015; Wellsmith, 2010, 2011). Traditional reactive policing models of detection, apprehension, and punishment (Bright, 1993) risk being inadequate in the case of environmental harm, where irreparable environmental damage or loss of animal life may already have occurred.

The rising global scarcity of natural resources is increasingly attracting transnational criminal organisations. Organised crime syndicates are diversifying into the lucrative business of tropical timber, endangered species, and natural minerals, alongside their traditional activities (van Uhm & Nijman, 2020). The developing interconnectedness between environmental crime and other serious crimes shows that traditional lines of separation are no longer appropriate for understanding and dealing with the increasing complexities of organised crime (van Uhm & Nijman, 2020). Depending on the scope and intensity of the ecological consequences, the activity undertaken, the characteristics of the perpetrator, and the prescriptions of specific behaviours in the laws and other general by-laws, as well as the types of prescribed sanctions, several environmental offences will be discussed in the rest of the paper.

In the last few decades, there has been a significant expansion in the construction industry in Montenegro, accompanied by numerous abuses, prompting the state to resort to criminal legal protection as a final means of protecting the environment. The Criminal Code (2020) became the primary legal framework in this area. Illegal construction has long been a major state problem, with illicit activities of destruction and environmental damage often accompanied by other forms of criminality, such as money laundering.

2 Illegal Construction of Buildings in Comparative Legislation

There are not many countries that have prescribed one or more criminal offences against spatial planning in their criminal legislation. In this part of the chapter, we will address a few countries that incorporate criminal offences against spatial

planning into their legal systems. The countries of the former Yugoslavia were chosen due to their shared legal tradition, which is logical and justified. The legislation of these countries is harmonised with that of the European Union.

In the group of criminal offences against property, the Criminal Code of Serbia (2019) prescribes two criminal offences in this area. The first criminal offence is construction without a building permit, as defined in Article 219a of the Criminal Code of Serbia (2019). The first form of this crime is committed by a person who is a contractor on a building being built or who performs work on the reconstruction of an existing building without a building permit. Another form of this criminal offence is committed by a person who is an investor in a building without a building permit (Criminal Code of Serbia, 2019). The third form of this criminal offence is committed by a person who continues the work when the decision to suspend the work was issued. The fourth form of this crime is committed by a person who, as a responsible designer or person performing technical control, contrary to the notes, signed the final report on the performed control, which states that there are no objections to the main project, or contrary to the regulations put a seal on the main project that the project is accepted, or contrary to the rules gave a statement confirming that the location permit completed the main project (Criminal Code of Serbia, 2019). Another criminal offence recognised by Serbian criminal legislation is connecting a building without a permit. This criminal offence is committed by a person who connects a facility or a responsible person in a legal entity who allows the connection of a facility, which is being built or has been built without a building permit, to the electric power, thermal energy, or telecommunications network, water supply, and sewerage (Criminal Code of Serbia, 2019).

Chapter 30 of the Criminal Code of Slovenia (2012) provides for the criminal offence of causing danger in construction activities. There are four forms of this criminal act. The primary form sanctions a person who is responsible for planning or controlling plans for the creation or management of masonry or construction works who acts contrary to regulations and generally recognised technical standards and thus causes danger to human life or property of great value. This form of criminal offence is punishable by up to three years in prison. Paragraph 2 provides for a less serious form of this crime, specifically if the basic form of the crime is committed negligently. In paragraphs 3 and 4, more serious forms of this criminal offence are outlined, together with their consequences. If the execution of this

criminal offence resulted in a serious physical injury to one or more persons or caused substantial material damage, and this was done with intent, the penalty is up to five years in prison (Criminal Code of Slovenia, 2012). If the same act was done negligently, the penalty is imprisonment for up to three years. The most severe form exists if the execution of this criminal offence resulted in the death of one or more persons and the offence was committed with intent. In that case, the prescribed punishment is imprisonment from one to twelve years. If the act was committed negligently, imprisonment for up to eight years is prescribed (Criminal Code of Slovenia, 2012).

Chapter XX of the Croatian Criminal Code (2022), which regulates criminal offences against the environment, prescribes the criminal offence of illegal construction. This offence is committed by anyone who, contrary to regulations, builds a building in an area that has been declared a protected natural value, cultural asset, or other area of special interest to the state by regulation or decision of the competent authority (Criminal Code of Croatia, 2022). The punishment for this criminal offence is imprisonment from six months to five years. In the group of criminal offences against general safety, Article 221 of the Croatian Criminal Code (2022) prescribes the criminal offence of dangerous construction work. There are two forms of this crime. The basic form is committed by the person who, during the design and implementation of expert supervision over the construction or during demolition, acts contrary to regulations or generally recognised rules of the profession, thereby causing danger to the life or body of people or property of significant value. For the basic form, a prison sentence of six months to five years is prescribed. If the offence was committed negligently, the penalty is imprisonment for up to three years (Criminal Code of Croatia, 2022).

Article 244 of the Criminal Code of North Macedonia (1996) provides for the criminal offence of illegal construction. The basic form of this criminal offence is committed by a person who builds or carries out construction or supervises construction on their own or someone else's land without a construction permit or contrary to a construction permit issued by the competent authority (Criminal Code of North Macedonia, 1996). For this form of criminal offence, a prison sentence of three to eight years is prescribed. Another form of this criminal offence exists if a building is constructed without a building permit for the purpose of sale. A prison sentence of at least four years is foreseen for this form. The same punishment applies

to the perpetrator of a criminal act who performs construction works contrary to the basic design or performs reconstruction on the structural elements of the building without the basic design and violates the mechanical resistance, stability of the building, and seismic protection. Paragraph 4 of Article 244 of the Criminal Code of North Macedonia (1996) prescribes the commission of a criminal offence by an official in local self-government or a state body responsible for the execution of works in the area of spatial planning, who issued a decision on location conditions contrary to the valid urban plan or issued a building permit contrary to the decision on location, thereby violating the space and obtaining illegal property gain for themselves or another, or causing damage to another. A prison sentence of up to eight years is prescribed for this form. The next paragraph specifies the commission of this criminal offence by a legal entity and the anticipated fine for the perpetrator, as well as the confiscation of built real estate as a security measure (Criminal Code of North Macedonia, 1996).

Turkey is a country that experienced the full consequences of illegal construction when tens of thousands of people died recently in a catastrophic earthquake. All demolished buildings were built without a building permit, while those that were built legally did not suffer major damage and, most importantly, saved human lives (Criminal Code of Turkey, 2004). Article 184 of the Criminal Code of Turkey (2004) prescribes the criminal offence of pollution caused by construction. The criminal act involves constructing or allowing construction without a previously obtained permit or performing works contrary to the permit. There is also a provision under which the perpetrator will not be punished if they return a building built without a permit to its previous state or follow the permit if they deviate from it (Banović, 2019). In the devastating earthquake, there was no damage to buildings and no casualties in the city whose mayor strictly adhered to the law and did not allow crimes against the environment to be committed. No one could build without proper registration and a building permit. That is why it is important to adhere to standards in construction.

In England, there is construction control through an execution order issued by local authorities in cases of construction without a building permit or non-compliance with the issued construction permit, which includes a request for a specific action, such as undertaking or ceasing to perform an action, or demolishing a building erected without a permit. This is an administrative measure of a misdemeanour nature. A criminal offence exists if the issued order is not followed, not because of

illegal construction, but due to the violation of the requirements of state authorities (Town and Country Planning Act, 1990). The order also specifies the conditions for defence if the order was not delivered to the defendant or if it was not filed in a special register, or if the defendant proves that they have fulfilled all obligations from the order that they were required and able to fulfil (Town and Country Planning Act, 1990).

3 Montenegro and Sustainable Development

Montenegro is a unique state defined as an ecological state based on the rule of law according to its Constitution (Constitution of Montenegro, 2013). In 1991, the country adopted the Declaration on the Ecological State through its parliament (Parliament of Montenegro, 1991). A year later, the Constitution of Montenegro (1992) included a provision on the ecological state, confirmed in 2007 by the adoption of the highest legal act. In collaboration with the United Nations University for Peace and Development, a document titled “Development Directions of Montenegro as an Ecological State” (Parliament of Montenegro, 2001). The country has also adopted the National Strategy for Sustainable Development until 2030 in response to leading global challenges aimed at achieving the United Nations Sustainable Development Goals. This document comprehensively addresses sustainable development, focusing on the environment, economy, human resources, and overall total social capital.

Declaratively, the state is committed to sustainable ecological development, but it is far from achieving the United Nations Sustainable Development Goals (SDGs). In the last 30 years, there has been significant expansion in the construction industry. Previously, land conversion, mainly from agricultural to construction use, was carried out, resulting in large-scale devastation of the area. Illegal construction in Montenegro represents a significant problem that has persisted for decades, with incalculable consequences for the environment and space in the country. In 1979, Montenegro experienced a catastrophic earthquake that caused severe consequences along the coast, resulting in many human lives lost (Ministarstvo prostornog planiranja, urbanizma i državne imovine, 2021). Unfortunately, this tragic experience was not enough of a warning to prevent future construction outside the regulations.

4 Criminal Offences against the Environment and Spatial Development in Montenegro Legislation

Chapter XXV of the Criminal Code of Montenegro prescribes 30 criminal offences against the environment and spatial planning (Criminal Code of Montenegro, 2020). The object of protection for these criminal acts is the environment, which is considered a set of natural and created values whose complex interrelationships form the space and conditions for human life. This can refer to the environment as a whole or its individual components, such as air, water, land, fauna and flora. The quality of the environment is determined based on physical, chemical, and biological elements.

The indicated values in this area are regulated by national and international law (Jolčić & Jovašević, 2011). Montenegro has passed numerous laws to protect the environment from pollution and destruction, such as the Law on Nature Protection (2016), the Law on Air Protection (2010), the Law on Environmental Protection (2016), and especially the Law on Spatial Planning and Building Construction (2020). We will discuss these laws in more detail. Environmental degradation refers to the deterioration of its quality due to human or natural activity or the failure to take measures to eliminate the cause of deterioration or damage to the environment.

All criminal offences in this group are defined by a blanket disposition, meaning that any act or omission deviating from environmental regulations constitutes an offence. Therefore, it is necessary to analyse these regulations to determine which behaviours are criminalised (Jovašević, 2017). The consequence of criminal offence is the endangerment of the environment and people's health. The danger can be concrete (i.e., when it really and directly occurred) or abstract (i.e., when it could have occurred but did not actually occur). It is essential to note that proving the occurrence of this danger is not required for the offence; undertaking the act of execution itself is sufficient to generate an abstract danger. Most criminal offences in this group can be committed by a public official or a responsible person. In terms of culpability, these acts can be committed intentionally or negligently. This chapter focuses on a subgroup of environmental crimes related to spatial development.

Montenegro's criminal legislation includes three criminal offences related to spatial development: building an object without registration and construction documentation (Article 326a), constructing a complex engineering facility without a construction permit (Article 326b), and illegal connection to infrastructure (Article 326c) (Criminal Code of Montenegro, 2020). In Montenegro's legislation, the construction of buildings is regulated by the Law on Spatial Planning and Construction of Buildings (2020). This regulation covers the construction of buildings, conditions for construction, legalisation of illegal buildings, and other important issues related to building construction on state property. The goals of the building construction aim to achieve rational use and preservation of natural resources, balanced spatial development in line with citizens' needs, land use planning, and building stability (Law on Spatial Planning and Construction of Buildings, 2020).

4.1 Construction of Facilities Without Registration and Documentation

The basic form of this criminal offence involves the perpetrator's actions contrary to the regulations on space planning and building construction, specifically by starting the construction of a building without prior registration and documentation, or by building a structure contrary to the revised master plan or the decision by the competent authority to prohibit construction (Criminal Code of Montenegro, 2020). This offence can be committed in two different ways. The first way involves acting contrary to the Law on Spatial Planning and Construction of Buildings (2020) by initiating construction without prior application and construction documentation. Therefore, to establish the elements of this criminal act, it is necessary to refer to the relevant norms. According to the cited article, the investor is required to construct the building based on the construction report and documentation specified by the indicated law. Article 91 of the Law on Spatial Planning and Construction of Buildings (2020) outlines the construction conditions. The investor must apply and documentation for the construction and installation of the facility. The construction documentation must include: 1) a certified master project, 2) a report containing a positive revision, 3) proof of liability insurance of the designer who created the project or the auditor who revised the master plan, 4) proof of the property right on the land, or another right to build on the land (such as a real estate certificate, concession contract or decision on determining the public interest), or proof of the property right on the building and another right to build if it involves building

reconstruction, and 5) contracts for engagement of contractors and professional supervision (Law on Spatial Planning and Construction of Buildings, 2020). The investor must submit the construction report and complete documentation to the competent inspection authority within 15 days before the start of construction. The inspection authority is required to publish the construction application on its website within one day from the submission date. Failure to meet these conditions constitutes the first form of committing this crime. The second way of committing this crime is by a person who builds a structure contrary to the revised master plan or to the decision of the competent authority to prohibit construction.

Article 95 of the Law on Spatial Planning and Construction of Buildings (2020) specifies that during the execution of works, the person responsible for professional supervision must ensure that the contractor completes the works according to the main revised project. This includes the control of work performance through expert supervision according to the revised main project, compliance with work specifications, quality control of work performance, quality control of installed materials, installations, and devices, verification of the correct documentation for installed materials, installations, and devices, and other activities prescribed in Article 100 of the Law on Spatial Planning and Construction of Buildings (2020). Any deviation from this project would constitute the occurrence of the first form of the second form of the indicated incrimination.

The construction of a building contrary to the decision of the competent authority on the prohibition of construction occurs when, according to Article 201 of the Law on Spatial Planning and Construction of Buildings (2020), the urban and construction inspector, during the inspection process, determines that a violation of the law or other regulations has occurred and prohibits the construction of the building if it has been started without the necessary registration and documentation. Moreover, the inspector has the legal authority to restrict the use of urban-technical conditions that are contrary to the planning document and to prohibit the construction of the building based on the revised master project that deviates from the urban-technical conditions set by the planning document (Law on Spatial Planning and Construction of Buildings, 2020). There is also an obligation to prohibit the construction of a facility if it is found that the main project or its revision contradicts the urban-technical conditions. In cases where the investor continues construction after such a prohibition, this type of criminal offence is deemed to have

occurred. If work is suspended and the construction continues thereafter, there is a more serious form of criminal offence due to the persistence of the perpetrator.

The consequence of this criminal act consists of jeopardising spatial planning (i.e., the manner and conditions of construction of buildings). In terms of guilt, intent is required, which also includes the knowledge that the building is being constructed without the necessary permits and an awareness of the illegality that the construction is contrary to the established legal procedure. The perpetrator can be a contractor, a responsible person in a legal entity such as a company or another legal entity, or an entrepreneur. Additionally, an investor or a responsible person in a legal entity acting as an investor may also be considered liable (Law on Spatial Planning and Construction of Buildings, 2020).

4.2 Construction of Complex Buildings Without a Building Permit

Article 326b of the Criminal Code of Montenegro (2020) prescribes the criminal offence of building a complex building without a permit. The essence of this offence includes alternatively placed forms of execution action. The common denominator for all three forms is the execution of works without a building permit. The execution of works encompasses construction activities such as construction crafts and the installation of products, plants, and equipment. The construction of facilities involves a set of activities including preliminary work, preparation and control of technical documentation, preparatory work for construction, construction of the facility, and expert supervision during its construction (Law on Spatial Planning and Building Construction, 2020).

The first form of enforcement action is carried out by the person who, contrary to the regulations on spatial planning and building construction, initiates the construction of a complex building without a building permit. According to Article 181 of the Law on Spatial Planning and Building Construction (2020), the competent ministry issues a building permit for the construction of a complex engineering facility based on the investor's request. The building permit is issued through a decision based on a certified conceptual or master project, a report on the positive revision of these projects, evidence of property rights, consent to environmental protection elaborations, and proof of liability insurance of the company that created and revised the conceptual or master project (Law on Spatial Planning and Building

Construction, 2020). The building permit includes basic information about the applicant, the authorised engineer responsible for managing the preparation of the technical documentation, and the auditor overseeing the revision of the technical documentation, as well as the location, type, and purpose of the building. It also outlines the construction phasing and the obligation to create the main project if the building permit is issued based on conceptual projects (Law on Spatial Planning and Building Construction, 2020). If the person initiates the construction of a complex construction object without a building permit, they have committed the first form of this criminal offence.

Another form of enforcement action includes the construction of a complex building object contrary to the building permit, revised master plan, or decision of the competent authority to prohibit construction. According to Article 172 of the Law on Spatial Planning and Building Construction (2020), complex engineering projects include highways, expressways, central and regional roads, tunnels, bridges, railways, airports, ports, and similar objects. The building is defined as having a roof and external walls constructed as an independent usable unit that provides protection from weather and external influences, intended for habitation conducting activities, or housing animals, goods, and equipment for various production activities. Buildings and engineering facilities are classified according to purpose, functional and structural characteristics, and the degree of environmental impact related to construction and exploitation (Law on Spatial Planning and Building Construction, 2020). The guilt requires intent, and the perpetrator can be a contractor or a responsible person in a legal entity who acts as an investor. The investor is the person for whose needs the facility is being built and in whose name the building permit is issued.

As a rule, the execution action can be performed by a person with specific characteristics determined in each case. However, it should be pointed out that it can be any person. The criminal offence is completed by the very beginning of the execution of works without a building permit. Therefore, there is no attempt at this criminal offence, and punishment for preparatory actions is impossible due to the considerable distance from the protective object. Initial activities would include setting up scaffolding, obtaining materials, and similar actions. Thus, construction is distinguished from preparatory actions, while continuous action determines the

execution of the offence. A criminal offence occurs if the execution has occurred at least once (Criminal Code of Montenegro, 2020).

4.3 Illegal Connection to the Infrastructure

This criminal offence is committed by a person who, contrary to the regulations on spatial planning and construction of buildings, connects or allows to be connected to the infrastructure of a construction site, a building under construction, or a built building for which no application for construction and documentation (i.e., building permit and documentation for the construction of a complex construction facility) has been submitted (Criminal Code of Montenegro, 2020). Article 72a of the Law on Spatial Planning and Building Construction (2020) stipulates that a construction site or a building on which work is being carried out that was built without submitting a construction report and the documentation prescribed by this law or a complex building without a building permit and a revised master plan cannot be connected to the infrastructure. The perpetrator of this criminal offence can be the person who connects the facility or the responsible person in the legal entity that allows the connection of the facility, which is being built or has been built without a building permit, to the electric power, thermal energy, or telecommunications network, water supply, and sewerage. Intent is required in terms of culpability.

An exception to these provisions is provided for connecting to the infrastructure of cultural and historical objects with the status of immovable cultural property, on which conservation measures are implemented according to the law regulating the protection of cultural property and objects for which a request for legalisation has been submitted. To connect these facilities, the owner or custodian of the cultural asset must obtain the technical conditions (Law on Spatial Planning and Building Construction, 2020).

4.4 Illegal Construction of Buildings

The Law on Spatial Planning and Construction of Buildings (2020) regulates the system of spatial planning, the manner and conditions of construction of buildings, the legalisation of illegal buildings, and other issues of importance in this area. According to Article 152 of this regulation, an illegal building is defined as one that was constructed in violation of the regulations that required a building permit at the

time of construction (Law on Spatial Planning and Construction of Buildings, 2020). The legalisation of illegal buildings is intended to be carried out by the competent body of the local administration, and it is the responsibility of the building owner to obtain a decision on legalisation (Law on Spatial Planning and Construction of Buildings, 2020). Meanwhile, the authorised ministry conducted a comprehensive ortho-photo recording of all buildings in the country's territory. For buildings without a legalisation application, the building inspector is obliged to issue a demolition order (Živković, 2018).

The largest number of illegally built buildings is in the capital Podgorica, followed by cities along the Montenegrin coast, with the fewest in the northern region, which lags significantly behind other regions in development (Table 1). The expansion of illegal construction began in the 1990s during a period of general confusion and irregularity, and it has continued at a reduced pace to this day (Ministarstvo prostornog planiranja, urbanizma i državne imovine, 2021).

Table 1: Tabular Presentation of the Total Number of Illegally Built Objects by Region

Northern region	Central region	Southern region	Total
8,000	52,000	40,000	100,000

Source: Ministarstvo prostornog planiranja, urbanizma i državne imovine (2021).

The call for legalisation was published in 2018, and after five years, the results are devastating. This is evidenced by the fact that only 4.86% of the submitted requests were legalised in half a decade (Table 2). The key reason for the slowness in resolving legalisation requests is the lack of planning documentation, particularly the General Regulation Plan, which should have been completed two years ago. Applicants for legalisation often do not have settled property legal relations on the land and the building, and the real estate is frequently not registered in the records of the Real Estate Administration. Many structures have not passed seismic and static stability checks. Some illegal buildings cannot be legalised because they were constructed in zones of marine property, national parks, road belts, airport zones, cultural property, zones of protected natural goods, energy facility zones, water land, water wells, and park forest zones. A significant number of requests have not been processed at all because the municipalities do not have enough officials available to handle these tasks (Ministarstvo prostornog planiranja, urbanizma i državne imovine, 2021).

Table 2: Tabular Presentation of Submitted Applications for Legalisation and Approved Legalisation

Application for legalisation submitted	Application for legalisation approved
56,000	2,722

Source: Ministarstvo prostornog planiranja, urbanizma i državne imovine (2021).

Table 3 shows the total number of reported, accused persons, and convicted persons for all criminal offences against the environment and spatial planning. The trend of increasing the number of criminal offences is evident: the number of reported persons in the period from 2018 to 2022 increased by 26.9%, the number of accused persons increased by 186.8%, and the number of convicted persons increased by 98.6%.

Table 3: Reported, Accused and Convicted Persons for Criminal Offences against the Environment and Spatial Planning in Montenegro for the Period 2018–2022

Year	2018	2019	2020	2021
Registered persons	269	303	376	377
Accused persons	99	139	273	284

Source: Tužilački savjet (2019–2022).

Based on the analysis of the type of criminal sanctions imposed on perpetrators of criminal acts, it is evident that the most imposed sentence is a suspended sentence, followed by a prison sentence and then a fine (Table 4). Given the lenient penal policy, which often results in sentences below the legal minimum, these sentences have not achieved their intended deterrent effect.

Table 4: Pronounced Sanctions for Criminal Offences against the Environment and Spatial Planning for the Period 2018–2022

Year	2018	2019	2020	2021
Prison sentence	17	20	16	16
Fine	10	18	13	10
Conditional sentence	41	67	93	111
Work in the public interest	5	13	17	9
Court warning	1	1	/	1
Total	74	119	139	147

Source: Tužilački savjet (2019–2022).

Between 2018 and 2021, 549 persons were reported for criminal offences against spatial planning. During the same period, 285 individuals were accused, while 199 were convicted. Despite serious threats to Montenegro's spatial integrity, the court's penal policy appears lenient, with conditional sentences dominating over 90% of judgments (Table 5). Imprisonment is rarely imposed, which was a key factor in prescribing illegal construction as a criminal offence to deter potential perpetrators.

Table 5: Reported, Accused, Convicted Persons and Criminal Sanctions Imposed on Perpetrators of Criminal Offences against the Environment and Spatial Planning for the Period 2018–2022

Year	2018	2019	2020	2021
Building construction without registration and construction documentation	Reported: 73 Accused: 39 Convicted: 8	Reported: 152 Accused: 70 Convicted: 46	Reported: 176 Accused: 90 Convicted: 73	Reported: 133 Accused: 77 Convicted: 70
Construction of a complex building without a building permit	Reported: 8 Accused: 6 Convicted: 2	/	Reported: 2 Accused: 1 Convicted: 0	/
Illegal connection to the infrastructure	/	Reported: 5 Accused: 2 Convicted: 0	/	/
Prison sentence	/	1	1	1
Fine	/	1	/	/
Conditional sentence	7	42	67	65
Work in the public interest	2	1	5	4
Court warning	1	1	/	/

Source: Tužilački savjet (2019–2022).

5 Discussion

In the 21st century, it is unnecessary to state that no building should be constructed without registration and documentation, such as a building permit. Each project must be audited by an auditor. As the number of construction requests increases, authorities face the problem of inefficiency and lengthy procedures for issuing building permits. Building permits are still issued manually and subjectively, resulting in many errors and significant delays during the construction process (Malsane et al., 2015).

The future of issuing building permits lies in the digitisation of construction permits. The European Network of Digital Building Permits has identified the process of issuing building permits as a priority for digitisation (Noardo et al., 2020). A comprehensive review of the literature on scientific contributions and the latest achievements in the field of digital construction permits shows increasing interest from the academic community in recent years, but the practical application has not yet taken root (Fauth & Soiberman, 2022). One reason for the lack of implementation is that it is not sufficient to code the law for automated checks and develop prototype software demonstrators if they are not embedded in the process. Automatic verification of code compliance and processes are not mutually exclusive but can complement each other (Fauth & Soiberman, 2022). Fundamental research in this field is often lacking compared to the large amount of applied sciences research (Noardo et al., 2022).

Requests for issuing construction permits worldwide show a tendency to increase (Fauth & Soiberman, 2022). Without a building permit, a construction project cannot be legally implemented. Thus, the building project must be reviewed by the competent authority. As the number of building projects to be inspected increases, building authorities face ever greater challenges due to inadequate personnel to manage the inefficient, labour-intensive, and lengthy building permit process.

In-depth scientific studies of the existing building permit processes are currently lacking (Fauth & Soiberman, 2022). Fauth and Soibelman (2022) introduce a proposed framework aimed at investigating and comparing building permit processes in Germany. Corruption has been identified as a major problem in construction projects. It is generally defined as any behaviour that violates legal norms in search of status or monetary gain (Nye, 1967). In the construction industry, corruption is defined explicitly as the abuse of assigned powers at the expense of a construction project (Chan & Owusu, 2017). In 2016, the World Economic Forum published a report showing that the construction industry is among the most corrupt industries in the world. Contracts and projects in this industry are large and exclusive. Factors contributing to corruption in construction include regulatory-specific causes, legal-specific causes, psychosocial factors, project-specific factors, organisational-specific factors, and other determinants arising from cultural and social environments, economic policy, and political environment (Owusu et al., 2019).

Early detection of risk factors and causal factors that encourage corruption can help reduce its manifestation, proliferation, and adverse effects in the construction field. The construction sector, whether privately or publicly financed, is characterised by potentially high rents and government intervention, making it vulnerable to corruption. Numerous scientific studies highlight the problem of fraud in this sector (e.g., Kyriacou et al., 2015). Corrupt public officials can favour the development of this sector because it increases the amount of rent available to them (Kyriacou et al., 2015). The construction industry accounts for about one-third of gross investments. The influence of corruption extends beyond the payment of bribes, resulting in poor-quality infrastructure with low economic returns and insufficient maintenance funding, which are the main generators of corruption. These social anomalies are evident in Montenegro, which has failed to combat corruption in this area. Furthermore, there is a growing consensus within and outside the construction industry that corruption and other unethical practices are endemic (Ameh & Odusami, 2010). Transparency International Bribe Payers Index (BPI) for 2005 revealed that corruption is greater in construction than in any other economic sector, and the BPI for 2008 indicated that public works and construction were perceived as the most corrupt industry in the world. Corruption in the global economy is a well-documented issue, with numerous reports verifying the extreme nature of corruption in the public sector and construction (Krishnan, 2009). Despite the uncertainty about the true cause of corruption, it is estimated that the industry's loss to corruption is approximately 10%, or 500 billion dollars per year (Jong et al., 2009).

Building permit processes have received little scientific attention so far, and much fundamental research is still lacking. In particular, scientific investigations of detailed as-is building permit processes are rarely found in the literature. Despite valuable contributions to digitisation, there is a gap in research examining building permit determination from a project management perspective. Few approaches focus on the processes within a public authority (which should be distinguished from the planning office view or early design phase). These processes are essential for obtaining a building permit, especially regarding efficiency and transparency for all stakeholders (Schleich, 2018).

6 Conclusion

The processes of issuing building permits in some countries are complex and inefficient. Existing approaches focus on improvements through digital transformation but often overlook fundamental issues. The main problem in this area relates to the slow collection of numerous documents, inefficient case management, and lack of communication between individual agencies. There is a lack of standardisation in the issuance of building permits that prevents the process from becoming more efficient. The implementation of digitisation is particularly crucial in addressing these challenges.

In Montenegro, the process of obtaining a building permit is extremely complicated, with elements of corruption. This situation represents an additional financial burden for the investor and undermines faith in state institutions. When citizens realise that it is possible to circumvent state restrictions with the help of bribes, they lose trust in institutions, and building permits lose their significance because, in practice, they do not guarantee quality and can also lose legitimacy with builders.

Illegal construction has been a problem for decades in Montenegro, caused by various factors. The most significant issue is the absence of planning documentation that would allow construction according to legal regulations. The country has not yet adopted a general regulation plan, which is one of the key documents needed. Another factor is the lack of effective control over illegal construction. In the past, lawmakers attempted to legalise such structures by passing laws, but these efforts were ineffective. Deadlines for legalising structures have been extended, yet illegal construction continues to increase rather than decrease, despite being sanctioned as a criminal offence. Building inspections do not effectively prevent illegal construction or occupation of buildings. Therefore, systemic measures are needed to improve this situation, in line with SDG 11, which aims to make cities and human settlements inclusive, safe, resilient, and sustainable. Improving the efficiency of the criminal justice and other state control mechanisms should align with SDG 16 goals, promoting peaceful and inclusive societies for sustainable development, ensuring access to justice for all, and building effective, accountable, and inclusive institutions at all levels. SDG 17 emphasises the importance of partnerships for sustainable development, underlining the need for cooperation among all state control mechanisms, especially in implementing and enforcing legislation.

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