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**KOMENT I PROCEDURËS PËR LEGALIZIMIN E OBJEKTEVE TË
NDËRTUARA PA LEJE PËRMES LIGJIT PËR TRAJTIMIN E
OBJEKTEVE TË NDËRTUARA PA LEJE NË REPUBLIKËN E
MAQEDONISË**

**КОМЕНТ НА ПОСТАПКАТА ЗА ЛЕГАЛИЗАЦИЈА НА
БЕСПРАВНО ИЗГРАДЕНИТЕ ОБЈЕКТИ СПОРЕД ЗАКОНОТ
ЗА ПОСТАПУВАЊЕ СО БЕСПРАВНО ИЗГРАДЕНИ ВО
РЕПУБЛИКА МАКЕДОНИЈА**

**COMMENT ON THE PROCEDURE OF LEGALIZATION OF THE
ILLEGAL BUILDINGS THROUGH THE LAW FOR
LEGALIZATION IN THE REPUBLIC OF MACEDONIA**

ABSTRACT

Institutions in the Republic of Macedonia during the transition period have not functioned properly; on the other hand the need for more construction land caused a large number of buildings to be built out of the legal framework. According to the calculations until 2011 the number of illegal buildings was around 330 000. To prevent this phenomenon and to gain legal status of the buildings constructed without a permit the government of the Republic of Macedonia adopted a decision on the formation of a special law that would regulate the status of illegal buildings. This law devalues the principle of equality between

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citizens, and it contains profound voids that caused a large number of subjects to own property rights according to this law, even though they didn't meet the conditions that are required by the law. This law was adopted with the intent to solve the case of buildings constructed without permit, but it induced a series of missuses. This is caused as a result of no preliminary analyses. The constitution of the Republic of Macedonia foresees that all citizens are equal in front of state institutions and that is why the government needs to find a certain legal procedure or to introduce a new law with which it would equalize the fee contribution of the citizen to the state budget.

Key words: Law for legalization, injustice, property rights, illegal buildings

1.INTRUCTION

The transition period in the R.M. began in 1991 when the R.M. became an independent country. This period was very difficult for the normal operation of all public institutions that were responsible for administration of the overall activities in the country. Even though R.M. has inherited some institutional experience from the Yugoslav Federation, the same has not been sufficient for confronting with the new challenges that were presented in the following years. The responsibility for solving the matter was specifically upon the state institutions because during this period the same have not had the impact nor the help from external factor as before (Yugoslavia institutions). The central and local government has not functioned properly and this caused a lot of buildings to be built outside the legal framework. This category of objects are known as illegal buildings and their number until 2011 was estimated to be around 330 000 objects. The phenomenon of illegal buildings is unacceptable for a democratic country, so how was it allowed in a legal state for such a large number of illegally built constructions to be built is a case that is difficult to explain. When analyzing this phenomenon in certain point of views, there are a lot of reasons why was it allowed for a lot of objects to be built illegally. The main reasons that enabled this process are:

- The need for more land for construction purposes that has been increasing constantly.
- The central and local government institutions have taken no measures for the growing demand for construction land.
- The massive migration from rural areas to urban areas.

- Little to no inspections from local government for the massively constructed illegal buildings
- Subjects that have built their buildings contrary to the law have not been sanctioned properly.
- Illegal buildings were allowed to be involved in public services.
- Subjects spared money priority by not paying fees that are mandatory if following the regular procedure of obtaining ownership.
- The owners of illegal buildings made extensions on their buildings frequently and didn't notify the local government about the changes.

Rapid urbanization is a situation that appears in countries that began developing after World War II (Turcan. E,1993)². As result of unequal developing in urban and rural areas a larger number of illegal buildings appeared mostly in rural areas because of the lack of spatial planning. In cities where urban planning was in use the number of illegal buildings was lower due to the frequent inspections from the local government. The phenomenon of illegal buildings is also common in other states of the region such as: Greece, Albania, Montenegro and Cyprus (Potsiou. C, 2012)³. In Turkey the amount of illegally built constructions reaches 10% of the total number of constructed buildings (Uzun B et al., 2004)⁴.

2. LAW FOR LEGALIZATION

The failure to follow the regular procedure for constructing objecttts caused the state economy a significant loss of income, while state institutions on the other hand for several years have been neglecting this massively spread phenomenon. Analyzing these factors in 2011 the Government of the R.M. adopted a decision for introducing a new law that would solve the legal status of the illegally built objects (The law for legalization - Official journal of the R.M. no. 23 from 24.02.2011). This law stipulates that illegal objects can obtain legal status in terms of legal documentation through a shortened procedure which takes place between all institutions that also participate in the regular procedure of obtaining ownership upon property with the exception of private companies such as licensed building companies.

² Turcan. E,1993

³ Potsiou. C, 2012

⁴ Uzun B et al, 2004

The process of obtaining the property right through the Law for legalization requires following the procedure given in Figure.no.1

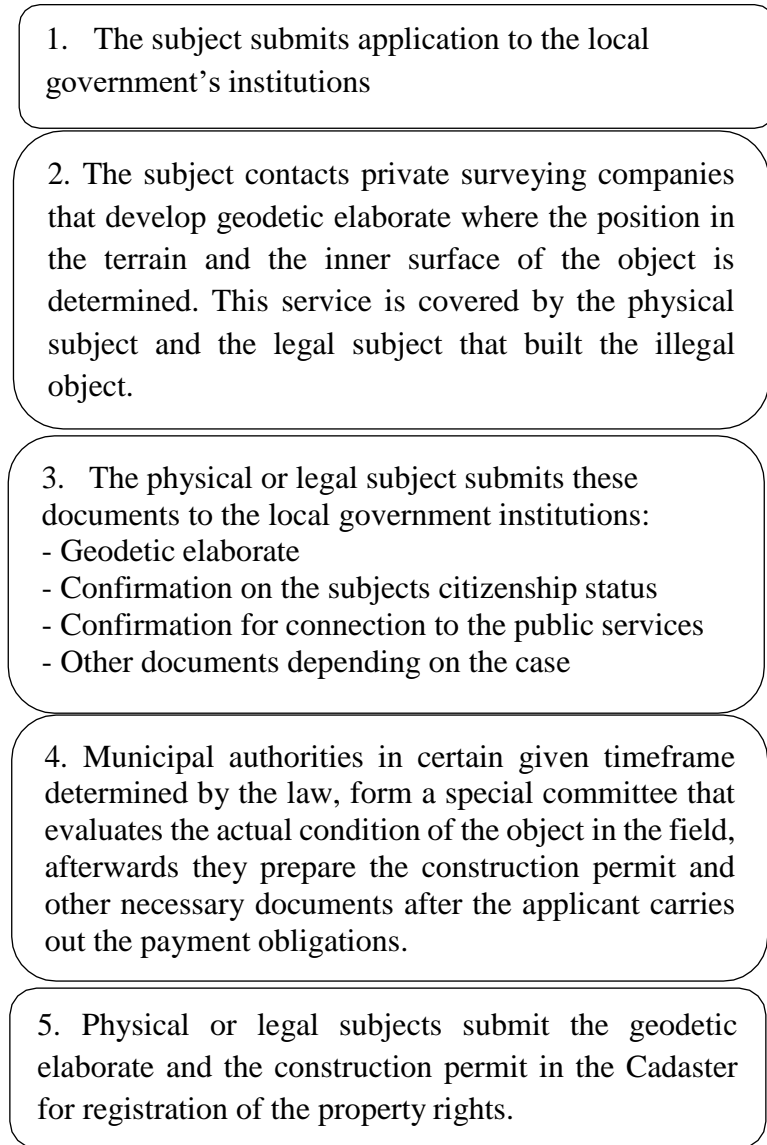


Fig.2.Procedure of obtaining the property right through the Law for legalization

The Law for legalization foresees that the right for submitting a request have the physical subject-citizens of the R.M. and legal subjects registered in the Central Registry of the R.M., also foreign physical and legal subjects if they meet the required conditions for obtaining the right of property according to the Law of property and other real rights. The right of obtaining property for foreign physical and legal subjects is also guaranteed by the Law of property and other real rights⁵. After the introduction of the law there were a large number of requests from physical and legal subjects that submitted their requests for regulating the status of their illegally built objects. The number of the requests has been larger in the northern-west Macedonia as a result of the fact that this part of the state territory is more developed in terms of infrastructure. The applicant needed to submit the following documentation to the institutions of the local government⁶:

- Confirmation of state citizenship or photocopy of ID of the physical subject-citizen of the R.M, while foreign physical subjects need also the authorized stay. Legal state subjects need the certificate from the Central Registry of R.M. meanwhile foreign legal subjects need the certificate from the Central Registry of R.M if they are registered as a legal subject in the legal frame of R.M. or a certificate from the competent foreign institution for registration of the foreign legal subject.

- Confirmation of connection with municipality infrastructure and/or confirmation of payment for public services (electricity, water, or other) and if in case the built object constructed without permit does not have a connection with the infrastructure, then a statement confirmed at a notary office, given under criminal and material responsibility with which the applicant declares that the illegal object was built before the law entered into force.

- Geodetic elaborate for confirming the factual state of the object built without permit with a property list in which the same was build and other documentation depending on the case.

By meeting the above requirements the Law for legalization enables the applicants to regulate the legal-property status of their illegally built objects and the value of the municipality taxes that the applicants have to pay is favorable.

⁵ Закон за сопственост и други старни права pg.1

⁶ Закон за постапување со безправно изградени објекти pg.2

The value of the municipality taxes that the applicants pay at the local government institutions reaches the value of 61.00 den for a m², if the illegal object is classified for housing⁷. This value is three up to four times lower in comparison with the value of municipality taxes that applicants have to pay if they decide to follow the regular legal procedure of obtaining property. While analyzing these characteristics we can conclude that the subjects that have obtained the property rights according to the regular procedures have contributed a larger sum of money in the state budget comparing to the subjects that decided to obtain their property rights through the Law of legalization, even though in both cases we deal with the same right; property rights upon objects. Both these routes are legitimate based on the Laws of the R.M. and through these legal routes the property right upon objects can be obtained, while the difference lays in the fact that one group of citizen's deposited more fees in the state budget. The process of obtaining the property right according to the regular legal procedure requires following the procedure given in Figure.2

1. The subject needs to require the processing of geodetic elaborate for numerical data and to submit the same at the local government institutions.

2. Processing of the basic design (project) in a private licensed company according to the standards of urban planning and submitting the same at the local government institutions.

3. The applicant needs to pay the fees for building and then he will be granted with the building permit.

⁷ Правилник за стандарди и нормативи за урбанистичко планирање pg.9

4. Construction of the buildings according to the conditions of building permit and the examination by the licensed monitoring company (in case of a change during the construction the applicant needs to submit the additional project and notify the municipal authorities, where additional fees take place)

5. The applicant needs to submit another geodetic elaborate (the elaborate includes the building permit and the basic projection), the same needs to be delivered to the local Cadaster Agency for registering the property rights.

Fig.1.Procedure of obtaining the property right through the regular procedure

It is apparent that the regular procedure for registration of the property rights upon buildings is more rigorous in comparison to the shortened procedure of the Law for legalization. The shorter procedure and the lower fee payments have resulted in a larger number of citizens to choose to follow the opportunity given by the Law for Legalization for obtaining property rights on buildings.

3. CONTROVERSIES

Even though the number of illegal buildings was large, the institutions of the local government initially needed to estimate the number of illegal buildings and afterwards to start with the practical implementation of the law. In this way the misuse would be prevented. The right of property on illegal buildings can be obtained if the construction is built before the law come into force; to prove this fact the law requires that the applicants need to provide evidence of using public services before 2011, with this they prove that their illegal building was constructed before the law entered into force. If in case the applicants can't fulfill these requirements he then needs to give a statement in a Notary office where he will declare and claim under full

criminal and material responsibility that the illegal building was constructed before the law entered into force. This particular article of the law has given the opportunity to subjects to misuse it, because a major number of applicants had given statements in Notary offices with which they declare that their illegal buildings were built before the law entered into force even though they have built their objects afterwards. This activity was allowed because the law did not contain an article that would precisely estimate the time of construction of the buildings. The law foresees that applicants need to submit all documents in the institutions of the local government by the end of 2016, and this is a period long enough that has given the opportunity to the applicants to build their objects and then to obtain their property right through the law of legalization even though they didn't meet the requirements required by the law. This route was more affordable for citizens because they had to pay lower taxes, and interestingly a particular number of subjects that indeed did built their objects before 2011 could not use this the opportunity because they did not submit the application on time and consequently did not have an ordinal number to continue their procedure in the local institutions. The government's decision in 2016 to give an additional deadline for submitting applications has given the opportunity to subjects to apply for regulating the legal status of their buildings built between 2011-2016 or objects that they plan to build by the end of 2017 when it is the final deadline for delivering the geodetic elaborate and others documents in the local government institutions even though they did not meet the criteria.

The Law for legalization foresees that the land that is under ownership of the R.M. in which the subjects have obtained the rights of property upon their illegally built buildings have the priority right to apply for buying the land under their constructions after the urban plan will be enabled⁸. The value of the price that the subjects will pay for the land is significantly lower than the value that the land has in current market. As a comparison, in Turkey the value that subjects were obligated to pay for the land was foreseen to be equal with the current value, so the subjects will need to pay it in a period of 4 years (Uzun B et al.,2004)⁹. The lower price of the land has caused a number of applicants to submit application for their illegal buildings, and afterwards to start building their objects, but their aim was to buy the land

⁸ Закон за постапување со безправно изградени објекти pg.11

⁹ Uzun B et al., 2004 pg.3

in ownership of the Republic of Macedonia and make it their own. This phenomenon mostly occurred in the areas where the value of the land is very high or in areas where the subjects were using the land for certain years but they were not the owner of the land. If in case the subjects would not submit the application to buy the land from the Republic of Macedonia then they are automatically granted long-term rent by official means. The long-term rent regarding the land in which the illegal building is constructed can last 10 up to 99 years¹⁰ according to the procedures required with the Law for privatization.

4. CONCLUSION

The Law for legalization that was adopted with the decision of the government was intended to regulate the legal status of illegal buildings; the law was also initially lucrative for the state budget. The voids in this law gave the chance to subjects to obtain property rights upon their illegal buildings, even though they built their constructions after 2011. This phenomenon would be prevented if the government would initially estimate the number of illegal buildings before enforcing the law. Subjects that have obtained property rights upon their illegal buildings according to the law for legalization have contributed less than the others that have chosen the regular law procedures. The government has constitutional duty to treat all citizens equally, and with the implementation of this law the government indirectly favors some subjects in comparison to others; the principle of equality in this case does not apply. Because of this, before enforcing the law the government needed to make additional analyses that would not cause inequality between citizens. Another suitable option that would equalize the contribution of citizens in the state budget would be a decision by the government which will obligate the subjects that have obtained the right of property through the Law for legalization to pay higher value of taxes for few years, in order to induce equality between citizens. This draft-solution doesn't need special analyses because the property list in which the subject has obtained the property right through the legalization law there is a remark that displays this. There are certain subjects that have illegal buildings but they didn't submit the application to regulate the status of their illegal buildings. What is to be done with them? The Law for legalization needed to solve this problem with a single paragraph

¹⁰ Закон за приватизација и закуп на градежно земјиште во државна сопственост pg.11

which would oblige all subjects that have illegal buildings to submit applications otherwise they would be deprived from ownership. As an additional issue in certain urban areas where the illegal buildings are located inside the city, the same did not meet the standards required in the Law for spatial planning. In these cities a suitable model that would solve this issue and from which the involved subjects would benefit is the model developed by authors Bayram Uzun and Mehmet Cete (Uzun et al, 2004)¹¹.

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