

Challenges of regularization of informal settlements in South East Europe

Overview of the relevant urban
planning and legalization laws
and practice



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Preface

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This report addresses an issue of central importance to the social, economic and institutional development of local governments in south-east Europe, as represented through their associations by the Network of Associations of Local Authorities in South-East Europe (NALAS). All thirteen entities have diverse backgrounds in terms of economic management and political structure. Almost all are currently at different stages of a major socio-economic transition which imposes new challenges for all sectors of economic management. No sector is more directly affected by these changes than urban development and management, given the key role played by urban centres in national development. This, together with a common goal of integrating into the European Union, has motivated the preparation of this Study.

Rapid urban growth has generated a dramatic increase in the need for land, services, credit and livelihood opportunities. Understandably, local governments have found it difficult to keep pace with the complexity and scale of these needs. As a result, people have resorted to self-help and various types of informal settlements have emerged in all the countries as observed by the local government associations that participated in the Study.

The focus of the Study is on the most common form of informal settlement, namely large, peri-urban residential settlements, consisting of individual family houses, mainly built on privately owned agricultural land around big cities. Other issues, such as the integration of Roma or other special needs groups, are not addressed directly, though by helping to remove obstacles to sustainable urban development, it is hoped that all social groups will benefit.

The integration of informal settlements into the formal land and property market inevitably places the spotlight of the report on legal issues, although planning and building standards and regulations, together with administrative procedures for processing development applications, are addressed briefly.

Study methodology:

The report was prepared over a short period using a questionnaire survey. Respondents were local experts from each participating local government association. All information and data were analysed by an experienced regional consultant who prepared the report. A wealth of information is provided on the respective urban conditions, laws, procedures, plans and situations of their respective national level. Raw data is provided in a series of tables.

Issues Related to Urban Planning

At the current stage of socio-economic transition, local governments in SEE are under pressure to make their planning systems more efficient in order to attract investments and boost their economies. They do so primarily by trying to simplify the planning and building regulations and administrative procedures for issuing construction permits. However, as local governments become more economically ambitious in the future, other social and environmental considerations will need to be taken into account, such as balancing the needs of investors and developers with those of the affected communities.

Promoting participation

In mature democracies, participation is a core element in ensuring that planning achieves and maintains social legitimacy. Such an integral feature of planning requires a *modus operandi* for professional planners in which their skills and experience are put at the service of the wider community, not one in which they regard themselves as experts seeking validation for their plans.

The Study findings imply that the change of role from control to regulation and guidance is an ongoing process for some member associations. Local government officials, local governments and their associations would clearly benefit from increased links with European networks which could help give practical guidance through case study projects. In this way, participation can provide an opportunity for a wide range of stakeholders in the private and civil society sectors and various specialized interest groups to influence both the formulation of strategies, and also their implementation.

This realization will motivate local government units through their associations to develop well-defined participatory decision-making procedures that will ensure that all the stakeholders involved in the process define and apply their roles clearly and effectively.

Decentralization

The report rightly stresses that effective decentralization requires that powers and responsibilities are matched by a reallocation of financial, technical and other resources. If these are lacking, decentralization may impede effective planning and undermine public support for the policy and even for democracy itself. The reallocation of staff may also require a change in working practices and culture which can take time to effect, leading to a period of disruption before positive outcomes are realized.

It will be important to minimize conflicts of interest between central and local governments. These may be most likely when there are different parties in power at different levels, or when the political ambitions of mayors of big cities are seen as a threat to those in power nationally. Solving these issues properly is one of the key elements in providing an efficient and effective planning system which will create opportunities for everyone.

Defining the public interest

With the collapse of socialism, the public interest was no longer defined by the State, but by a multiplicity of private and civil society groups. Therefore, a key topic for NALAS member associations in countries undergoing a socio-economic transition is to help local governments properly define the public interest, as well as to determine, through broad

discussion, which of the private interests are valid and as such should be included in plans and strategies, and which are negative should be excluded.

One of the challenges facing planners globally, and not only in local governments in SEE, is how to strike the balance between being market sensitive strategies to meet the interests of investors and at the same time protect the public interest. Key elements in the balancing act are clearly to protect public health and safety.

A changing role for planning

The report acknowledges that a key function of planning in emerging markets, or mixed economies, is to stimulate investment, which means being market sensitive. However, it also notes that this needs to be done in ways that ensure the benefits of such investment accrue to the wider community as well as to the investor. For professional planners this requires some training and opportunities to visit and network with professionals in other local governments with more experience in managing private investments for public benefit. It also suggests that opportunities should be provided for young professionals to be given opportunities for studying and training in other European countries where practical experience is well established.

Integrating informal settlements into the formal land and housing markets

A key feature of the report is its focus on the widespread existence of informal or unregistered settlements within most local authority jurisdictions. This issue is not restricted to SEE countries and is also widespread in Portugal and Greece. However, there is understandable concern within NALAS member associations, to address this issue and identify options for legalizing and integrating such settlements within the formal land and housing markets.

The causes of informal settlements, their extent and their characteristics are summarised in chapter 4 of the report. Two main types are described: slums built mainly on public land and inhabited by a high percentage of the Roma and large peri-urban residential settlements with family houses. The report focuses on the latter category and summarises the provision of services, planning practices and forms of construction adopted. It also describes the relationship between the informal settlements and the wider real estate market, providing a sound basis for assessing options for legalization.

Three different legal frameworks concerning the legalization of informal settlements are identified. These are cases where Informal construction is not specially addressed by laws and plans; 2) Basic laws on urban planning, by-laws and planning documents at the national and local level recognize and address the issue of informal construction, and; 3) Special laws (*lex specialis*) and by-laws are in place, enabling efficient legalization and regulation. Institutional structures and planning practices are discussed as a basis for in-depth discussions of three case studies of the Association of Albanian Municipalities (AAM), Association of the Units of Local Self-government of Republic of Macedonia (ZELS) and the Standing Conference of Towns and Municipalities (SCTM, Serbia).

The case studies pave the way for a discussion in the final chapter which proposes model procedures for regularizing informal settlements and legalizing informal construction. This provides a carefully thought out and comprehensive legal framework for policy makers. It

proposes special laws by which policy objectives can be realized. However, it remains to be seen whether a primarily legal approach will be sufficient to address the complex social and economic issues involved. It may be that additional attention is needed on simplifying the administrative procedures, reviewing the planning and building standards and removing unnecessarily restrictive planning regulations. If such measures are combined with the recommended model procedures, this can help provide the holistic approach needed to facilitate the gradual integration of informal settlements into the formal land and housing markets.

International experience shows that attempts to achieve such integration over a short time can generate a number of unintended consequences. A step-by-step approach which enables policy makers and administrators to learn from practice may therefore be a realistic basis for achieving the desired objectives.

The structure of the report:

Chapters 1 to 3 provide an invaluable insight and comparative analysis of urban planning systems and related national legislative frameworks in NALAS operational region, making the Study a unique resource for policy makers and the donor community in seeking to improve urban management in ways that benefit all sections of the urban population, and protect both the environment and cultural heritage. The case studies of AAM, ZELS and SCTM in chapter 4 provide a wealth of information about the legal and institutional context within which formalization and legalization is being proposed or implemented as seen from a public sector perspective. In chapter 5, the Study report proposes a generalized model on legalization procedures as a detailed framework for action.

The authors and contributors to this report are to be congratulated for taking on a massive challenge. It is essential reading for policy makers and all professionals, civil society organisations and researchers engaged in addressing the challenge. Finally, GIZ deserve praise for funding the study. It is to be hoped that such support continues in the future as NALAS member associations and their municipalities seek to apply the examples and lessons offered by the study to improve the living conditions and lives of increasing urban populations in the region and beyond.

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List of abbreviations

List of Local Government Associations

AAM	Association of Albanian Municipalities
SOGFBIH	Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina
ALVRS	Association of Towns and Municipalities of Republic of Srpska
NAMRB	National Association of Municipalities in the Republic of Bulgaria
UORH	Association of Municipalities of the Republic of Croatia
AKM	Association of Kosovo Municipalities
ZELS	Association of the Units of Local Self-government of Republic of Macedonia
CALM	Congress of Local Authorities from Moldova
UOM	Union of Municipalities of Montenegro
ACOR	Association of Communes of Romania
SCTM	Standing Conference of Towns and Municipalities, National Association of Local Authorities of Serbia
SOS	Association of Municipalities and Towns of Slovenia
UMM	Union of Municipalities of Marmara, Turkey

Other abbreviations

ALUIZNI	Agency for Legalization, Urbanization and Integration of Informal Areas/Constructions
AP	Action Plan
CBO	Community Based Organization
CEMAT	Council of Europe, European Conference of Ministers Responsible for Regional Planning
CPT	Community Participation Team
DRP	Detailed Regulation Plan
ECTP	European Council of Spatial Planners
EIA	Environmental Impact Assessment
EU	European Union
GIS	Geographic Information System
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit, German Development Cooperation
GRP	General Regulation Plan

GUP	General Urban Plan
ISPU	The Town-planning Design and Study Institute
KRRT	The Council for Territorial Adjustment
KRRTRSH	The Council for Territorial Adjustment in the Republic of Albania
LG	Local Government
LGA	Local Government Association
LLU	Local Legalization Unit
MSP	Municipal Spatial Plan
NALAS	Network of Associations of Local Authorities of SEE
NGO	Non Governmental Organization
NLA	National Legalization Agency
NUTS	The Nomenclature of territorial units for statistics
SEA	Strategic Environmental Assessment
SEE	South-East Europe
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNECE	United Nations Economic Commission for Europe
ZRPP	Immovable Property Registration Office

Notice to the reader

1. In this study the word entity is used to indicate the administrative unit corresponding to the respective local government association, participating in this study.

The entity sometimes means a country (such as Albania or Macedonia) and sometimes regional or federal units, such as Marmara (Turkey) or the Federation of Bosnia and Herzegovina and the Republic of Srpska (parts of Bosnia and Herzegovina)

2. Since in the major part of the text and in all the tables, the entities are referenced by acronyms of the local government associations, for easier reading, list of LGAs acronyms with their full names is given on the internal side of the front cover of this book, in the same order as the LGAs are listed in the tables.



Introduction

NALAS Urban planning Task Force, consisting of urban planning local experts from the SEE region, after analyzing current situation in the field of urban planning, has concluded that many of the countries in South East Europe are challenged by an insufficient legal framework and insufficient implementation of plans.

These problems create incoherent urban development, further producing a chain reaction of different dysfunctions in terms of traffic, accessibility, green spaces, access to public services, heritage, etc – all these affecting citizens' life and even health. Since there are numerous informal settlements throughout SEE, providing housing and related urban functions for a considerable number of low and middle income population, but also representing a significant market potential, the legal frameworks have to be adapted in order to efficiently enable integration of these settlements into the regular systems.

In 2004, national and regional representatives of South Eastern Europe signed the Vienna Declaration, which emphasizes legislation and stipulates that The urban, social and economical integration of informal settlements within the overall city structure will be a key factor in preparing for accession to the EU.

During the period 2007 - 2010, NALAS Task Force on Urban Planning has implemented Urban Integration of Informal Settlements project, consisting of three components. The project was focused on the occurrence of informal settlements and their causes and effects. These issues were addressed through pilot projects in two municipalities, Sukth in Albania and Prijedor in Republika Srpska, Bosnia and Herzegovina. The third component was the preparation of a comparative analysis of the legal frameworks for urban planning in 6 NALAS members. This component was implemented by the Association of Municipalities and Towns of Slovenia (SOS). The findings of this Analysis are available at the NALAS web page <http://www.nalas.eu/up/legalanalysis/index.aspx>.

This particular project is building upon the results of the legal analysis component of the above mentioned project. Additional 7 NALAS members were added to initial comparative analysis. Although this project relayed on the research context established during the first analysis, a new methodology was developed, the questionnaires were significantly extended and the legal framework from the first group of entities was updated.

Open Regional Fund for Modernization of Municipal Services GIZ has supported the implementation of the Project Comparative Analysis of Legal Framework Relevant for Urban Planning in Different NALAS Members. The objective of the Project was to identify main groups of insufficiencies in urban planning legal frameworks and to give recommendations how to improve these frameworks, with an emphasis on urban integration of informal settlements.

The Project has been implemented by Standing Conference of Towns and Municipalities, the national association of local authorities in Serbia, from November 2010 to October 2011. Thirteen NALAS members have appointed their representatives – local urban planning experts, to actively participate in the Project. The following local government associations have participated in the Project: Association of Albanian Municipalities (AAM), National Association of Municipalities in the Republic of Bulgaria (NAMRB), Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina (SOGF-BIH), Association of Towns and Municipalities of Republic of Srpska (ALVRS), Association of Municipalities of the Republic of Croatia (UOH), Association of Kosovo Municipalities (AKM), Congress of Local Authorities from Moldova (CALM), Association of the Units of Local Self-government of Republic of Macedonia (ZELS), Union of Municipalities of Montenegro (UOM), Association of Communes of Romania (ACoR), Standing Conference of Towns and Municipalities (SCTM), Association of Municipalities and Towns of Slovenia (SOS), Union of Municipalities of Marmara, Turkey (UMM). The role of local experts was to provide detailed information about the legal framework and performance related to planning, construction, informal construction, informal settlements and legalization, as well as to cooperate and participate in formulation of the recommendations.

Apart from local experts appointed by the local government associations, the main role in leading the process, development of methodology and producing the study was given to the Regional expert. By giving this complex task of coordination, analyzing and producing the recommendations to regionally (SEE) based expert, the whole process gained stronger sense of ownership. Regional expert was supported by Regional Legalization Expert, short term expert engaged especially to deal with the informal settlements and legalization issues. The process was facilitated by GIZ Core Advisor, who has provided permanent technical advise both in methodology and substance. The names and titles of the authors, contributors and other Project team members are listed in the acknowledgements section.

The purpose of this publication is to offer local government associations and their members set of quality arguments for future negotiations with central level governments about improvement of legal framework for urban planning. It should serve LGAs for lobbying purposes for improvement of laws and bylaws that regulate urban planning and construction processes, regularization of informal settlements and legalization of illegal constructions.

Methodology

The main methodological challenges were related to setting baseline hypothesis on research potential results, defining the key issues, collection and processing the data and the means of their comprehensive presentation. The research had begun upon the premise

that all of 13 LGAs share significant and similar problems in the field of urban planning with legal frameworks that are changing frequently¹. An additional motive for initiating the research itself was the clearly visible problem of unplanned urban development in large number of assessed territories. The Project team was given task to develop a Model of legalization and regularization process that may be applicable all over the SEE region, in the countries, mostly affected with informal construction.

The data has been collected through carefully prepared questionnaires, where the questions were structured upon themes and pre-defined answers. Predefined answers were accompanied by law references and written comments. The local experts were also invited to propose possible solutions for problems identified. Expert reports consisted of personal assessment of situation in the country, followed by diagram of the process of adoption of the characteristic urban plan, as well as collection of all relevant laws and bylaws in native language and in English were available.²

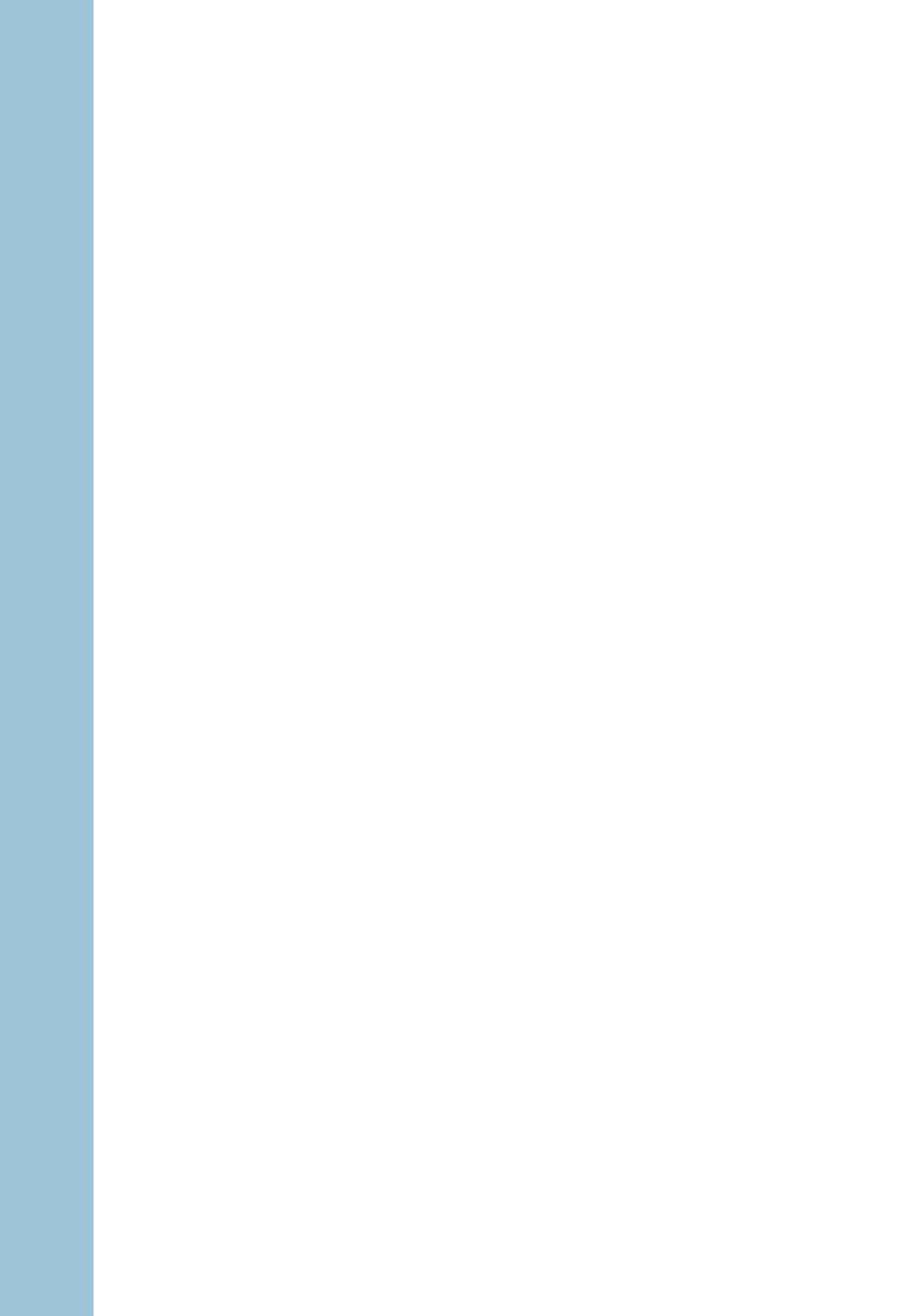
A more detailed analysis of the problem of informal construction and informal settlements is done in the last part of the study (Chapter 4), where the case studies of legalization laws of Albania, Macedonia and Serbia are presented. Recommendations of this chapter consist of already concrete guidelines for designing legalization regulations, applicable for countries with significantly developed informal construction.

At the end of the Study, resulting from the previous analysis, the authors have proposed a detailed model of the legalization procedure that is based on positive and negative sides of experiences and legislation in the three mentioned countries.

The study is conceived as a combination of a printed document, which consists of findings, conclusions and recommendations and an electronic version. The electronic version is offered on a CD with hyperlinks with all the original sources, i.e. the filled questionnaires with genuine comments, lists of relevant laws and their texts, separated for each association and in aggregated tables to enable comparison. It is expected that the original sources of this overview research can be valuable reference to professionals in local governments, local government associations and line ministries throughout SEE, as a helping tool in revision of laws and procedures relevant to urban development.

1 The agreed deadline for announcing law changes was June 15, 2011. The Study has not taken into account any of changes of legal framework that took place after June 15, 2011.

2 All the questionnaires collected, as well as laws, photos and other materials are comprised in an electronic version of this Study, available on CD and at <http://knowledge.nalas.eu/...>



1. Overview of relevant European and international policy documents on spatial planning

Urban issues and spatial planning have been and will become more and more a common concern for the EU³, as well as for international institutions. Over the past few decades, innovative approaches to spatial planning have spawned new ideas about space and place as well as the role of spatial strategies in the context of contemporary governance. In times of rapid change, when regions, cities and towns are faced with far-reaching social and economic changes and challenges arising from threats to the environment, various institutions and organizations have adopted and work under a number of key planning documents.

In reviewing the following texts, the focus will be on the most important and current documents related to spatial planning and urban issues. They are divided into two categories, depending on the type of political institution that produced the document and according to the scope of the urban issues they address.

1.1 Documents with general guidelines for spatial planning policies

These selected documents express the EU and UN institutions' political commitments, and their generalized texts deal with principles, goals, responsibilities, procedures and instruments for spatial planning and urban issues.

Institution	Document
United Nations	Agenda 21 or Rio Declaration on Environment and Development (1992) Habitat Agenda (1996) on UN Conference on Human Settlements (Habitat II)
United Nations Economic Commission for Europe (UNECE)	Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998)

³ Spatial planning is not a formal competence of the EU. Typically, European policy influences the urban level indirectly and aims to support positive developments at the local level. Development of European strategies and spatial development and planning policies was conducted through activities of two central European organizations – the Council of Europe and the European Union. However, these documents became so important in time that the new Constitutional agreement of the EU included the notion of territorial cohesion.

Institution	Document
Council of Europe, European Conference of Ministers Responsible for Regional Planning (CEMAT)	Guiding Principles for Sustainable Spatial Development in the European Continent (2000)
EU Parliament and EU Council	EU SEA Directive on the environmental assessment (2001/42/EC)
EU Parliament	Application of the Aarhus Convention to EC institutions and bodies (2006)
European Union	Territorial Agenda of the European Union (2007) Leipzig Charter on Sustainable European Cities (2007)
Commission of the European Communities	Green Paper on Territorial Cohesion. Turning territorial diversity into strength, (2008)
United Nations Economic Commission for Europe (UNECE) Committee on Housing and Land Management	Spatial planning. Key Instrument for Development and Effective Governance with Special Reference to Countries in Transition (2008)
European Parliament	Resolution on the urban dimension of cohesion policy in the new programming period. Urban dimension of cohesion policy (2009)
Ministers of Urban Development of the European Union	Toledo Declaration (2010)

Table 1. Overview of the relevant general documents, presented in chronological order

Agenda 21 or Rio Declaration on Environment and Development

(United Nations Conference on Environment and Development UNCED, 1992)

Worries about the environmental impacts of urban development were behind the revival of interest in planning in the 1990s with the United Nations Conference on Environment and Development (UNCED). This conference introduced the concept of sustainable development into planning through Agenda 21. As countries rapidly urbanize, the issue of sustainable urbanization becomes crucial since unplanned urbanization severely constrains the sustainable development of cities.

The Agenda 21 action plan, adopted by more than 178 governments at the UNCED conference in 1992, devotes a whole chapter to the planning and management of land resources. The text recognizes that expanding human requirements and economic activities place ever-increasing pressures on land resources, creating competition and conflicts resulting in suboptimal use of land and land resources. The action plan⁴ asserts that a more effective and efficient use of land and natural resources is required if future human requirements are to be met in a sustainable manner. Integrated physical and land-use planning and management are an eminently practical way to achieve this.

4 The Agenda 21 action plan states that: By examining all uses of land in an integrated manner, it makes it possible to minimize conflicts, to make the most efficient trade-offs and to link social and economic development with environmental protection and enhancement, thus helping to achieve the objectives of sustainable development. The essence of the integrated approach finds expression in the coordination of the sectoral planning and management activities concerned with the various aspects of land use and land resources.

The Aarhus Convention

(UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998)

The Fourth Ministerial Conference in the 'Environment for Europe' process was held in the Danish city of Aarhus. The Aarhus Convention is a new kind of environmental agreement. The Convention links environmental and human rights, acknowledges an obligation to future generations, establishes that sustainable development can be achieved only through the involvement of all stakeholders, links government accountability and environmental protection and focuses on interactions between the public and public authorities in a democratic context.

The Convention is not only an environmental agreement; it is also a Convention about government accountability, transparency and responsiveness. The Aarhus Convention grants the public rights and it imposes on public authorities obligations regarding access to information, public participation and access to justice.

Guiding Principles for Sustainable Spatial Development in the European Continent

(European Conference of Ministers responsible for Regional Planning CEMAT, 2000);

As a vision of an integrated Europe, these guiding principles represent the policy reference document for numerous spatial development measures and initiatives taken on the European continent, and in particular for transnational and international co-operation. The spatial development activities of the European Conference of Ministers responsible for Regional Planning (CEMAT) establish an important basis for Europe's harmonious integration by drawing attention to the territorial dimension of democracy and social cohesion.

The document stresses the importance of spatial development as a political task of co-operation and participation, where guiding principles form a basis for the assessment of projects and measures that are important from a spatial development policy point of view and which affect several states. Such a great diversity of structural and spatial measures requires inter-disciplinary integration and co-operation between the relevant political bodies and authorities.

EU SEA Directive on the environmental assessment

(EU Parliament and EU Council 2001/42/EC)

The EU Directive on the environmental assessment of certain plans and programs was adopted by the EU Parliament and the EU Council in 2001. The main aims of the Strategic Environmental Assessment (SEA) are: 1) to overcome limitations at the project level of the Environmental Impact Assessment (EIA) by considering key environmental issues in the planning process and addressing cumulative and synergistic impacts, 2) to introduce environmental and sustainability considerations in the formulation of strategic actions, and 3) to contribute to policy appraisal, thus making strategic decision more structured and transparent. An environmental assessment is carried out for those plans and programs that are likely to have significant effects on the environment.

SEA is especially relevant in the context of transitional countries where numerous strategic choices with significant environmental implications are being made. Practically all these countries have introduced SEA in their regulatory framework.

Application of the Aarhus Convention to EC institutions and bodies

(EU Parliament, 2006)

The European Parliament adopted this legislative resolution on the *Application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies* (6273/2/2005 – C6-0297/2005 – 2003/0242(COD)). The objective of this regulation is to contribute to the implementation of the obligations arising under the Aarhus Convention, by laying down rules to apply in practice the provisions of the Convention in EC institutions and bodies.

Territorial Agenda of the European Union

(EU countries ministers, 2007)

On 24 and 25 May 2007, the first joint informal ministerial meeting on urban development and territorial cohesion was held in Leipzig. Two policy documents, the Leipzig Charter on Sustainable Cities and the Territorial Agenda of the EU, were adopted.

With the adoption of the Territorial Agenda of the EU (based on the ESDP⁵), it was emphasized that there is a need to pursue sustainable economic growth, job creation, and social and ecological development in all EU regions while securing *better living conditions and quality of life with equal opportunities irrespective of where people live*. The new challenges identified are the regionally diverse impacts of climate change, rising energy prices, the accelerating integration of regions in global economic competition, the impacts of EU enlargement, the overexploitation of ecological and cultural resources and the territorial effects of demographic change. A key issue is to enable equal opportunities for citizens and the development perspectives for entrepreneurship. The Territorial Agenda regards the role of territorial cohesion⁶ as: focusing regional and national territorial development policies on better exploiting regional potential and territorial capital.

Leipzig Charter on Sustainable European Cities

(EU countries ministers, 2007)

Leipzig Charter supports the concept that an integrated urban planning approach is a prerequisite for sustainable development of European cities. It lays the foundation for a new integrated urban policy in Europe, focusing on helping cities tackle problems of social exclusion, structural change, ageing, climate change and mobility.

5 The 1999 European Spatial Development Perspective (ESDP), a non-binding framework that aims to coordinate various European regional policy impacts, was a result of a Member States initiative during the 1990s. The document advocates the development of a polycentric and balanced urban system and strengthening of the partnership between urban and rural areas; parity of access to infrastructure and knowledge; and wise management of natural areas and cultural heritage. The Green Paper on territorial cohesion, the EU Territorial Agenda and Leipzig Charter on sustainable European cities built further on the ESDP.

6 The concept of 'territorial cohesion' builds on the ESDP and the Guiding Principles for Sustainable Spatial Development of the European Continent. Territorial cohesion in the context of the Lisbon Strategy means: focusing regional and national territorial development policies on better exploiting regional potential and territorial capital – Europe's territorial and cultural diversity; better positioning of regions in Europe, both by strengthening their profile and by trans-European cooperation aimed at facilitating their connectivity and territorial integration; promoting the coherence of EU policies with a territorial impact, both horizontally and vertically, so that they support sustainable development at the national and regional level.

Its key themes concern strategies for upgrading the urban fabric and for enhancing local economies and labor markets, clean urban transport and the integration of migrants. According to the charter, the primary aim should be to attract people, activities and investments back to the cities – which are the engines of research, innovation and economic development in Europe – and to put an end to urban sprawl, as it increases urban traffic, energy consumption and land use. Focus should be made on the regeneration of existing residential and business areas in inner cities, with a greater mixture of living, working and leisure areas, making cities more exciting and vibrant, but also more socially and economically stable. Member states agreed that doing something about deprived neighborhoods should receive particular attention and be considered as a “public task” because the existence of such neighborhoods jeopardizes attractiveness, competitiveness, social cohesion and security in cities.

Green Paper on Territorial Cohesion: Turning territorial diversity into strength

(Commission of the European Communities, 2008)

Today the leading theme of regional and urban-oriented policies at the European level is cohesion, which aims to promote socio-economic convergence and coherence among and between the regions and in the cities of the union, thus ensuring a high quality of life. The Green Paper goes on to promote the idea that territorial diversity of the EU is a vital asset that can contribute to the sustainable development of the EU as whole. To turn this diversity into strength, it is important to address territorial cohesion through focusing on new themes, new sets of relationships binding EU territories at different levels and new forms of cooperation, coordination and partnership.

Spatial planning: Key Instrument for Development and Effective Governance with Special Reference to Countries in Transition

(United Nations Economic Commission for Europe UNECE, 2008)

This study identifies the role and benefits of spatial planning, the particular challenges vis-à-vis spatial planning that face countries in transition, its key principles, the division of roles and responsibilities, and priority actions for countries in transition. According to the Study, spatial planning has been defined as *a key instrument for establishing long-term, sustainable frameworks for social, territorial and economic development both within and between countries. Its primary role is to enhance the integration between sectors such as housing, transport, energy and industry, and to improve national and local systems of urban and rural development, also taking into account environmental considerations.* The overall framework of defined tasks goes beyond traditionally understood land use planning (physical planning) tasks.

First, the main two functions of planning are defined – the development and the regulatory functions. The study clarifies the principles, goals, responsibilities, procedures and instruments of spatial planning. It concludes that spatial planning can help to deliver economic, social and environmental benefits. Correctly administered, it is an important tool for promoting investment, development, environmental improvements and quality of life.

Urban dimension of cohesion policy (European Parliament resolution 2009)

The Resolution on Urban dimension of cohesion policy⁷ has highlighted the importance of the acceptance of an integrated approach to urban planning and the bottom-up principle, and promotion of sustainable urban development as a strategic priority and the contribution of urban areas to regional development. The Resolution identified an urgent need to reinforce the administrative capacity of both vertical and horizontal urban governance and draws attention to the pressing need to adopt an integrated approach in implementing urban development policy (transport services, public services, quality of life, employment and local economic activities, security, etc.), on the basis of the participation and partnership principle.

Toledo Declaration (Ministers of Urban Development of the European Union, 2010)

In 2010 the Ministers of Urban Development of the European Union⁸ formalized a commitment to apply a Spanish proposal for integrated urban regeneration. The Toledo Declaration sets out the EU's political commitment to defining and applying integrated urban regeneration as one of the key tools of the 2020 Strategy. Considering the urban dimension and the future challenges of European cities, the ministers outlined the need to promote sustainable development based on social cohesion. To that end, the ministers confirmed the fact that an integrated approach toward urban policies represents one of the key instruments that would facilitate the implementation of the 2020 European Strategy. In order to create the model of an intelligent, sustainable and social city, the ministers stressed the importance of implementing a development strategy that provides a global vision and the need to improve economic performance, eco-efficiency and social cohesion.

The Toledo Declaration sets out five measurement criteria related to environmental protection, the economy, the social sector and urban, architectural and cultural planning.

The following table explains main feature of the selected referential documents.

⁷ The Resolution has recommended that sustainable urban management plans should include some of the following elements: a waste management plan, noise maps and action plans, local air pollution and environmental programmes, forecasts for population growth, requests for new areas for development, reclamation of abandoned sites and buildings, regeneration of neighborhoods in decline and de-industrialized areas, availability and accessibility of public services, urban structure and the proportion of green areas, facilities for people with disabilities, upgrading the cultural, historical and natural heritage, estimating water and energy requirements and efficient use of water and energy, availability of public transport, effective traffic management, integration of vulnerable groups (migrants, minorities, people with few qualifications, people with disabilities, women, etc.), availability of decent housing at affordable prices, and plans to combat crime.

⁸ The meeting was held in a context of a global financial, economic and social crisis, having a strong impact on Europe's economy and also on its citizens' quality of life. European cities are facing the major challenge of overcoming this crisis and emerging stronger from it; but they are also facing other structural and long term challenges –globalization, climate change, pressure on resources, migrations, ageing and demographic change, etc.- with a strong urban dimension –impact on cities' economy, urban environment deterioration, increasing risk of social polarization and exclusion, etc. These challenges are a wake-up call, an opportunity to chart a firm course based on the principles of integrated, smart, sustainable, cohesive, inclusive urban development, as the only way to achieve a greater economic competitiveness, eco-efficiency, social cohesion and civic progress in European cities, and to guarantee citizens' quality of life and welfare in the present and in the future.

Documents	Guiding principles and measures
Agenda 21	<ul style="list-style-type: none"> - integration of issues and interests; - long-term character; - global dimension; - sustainable management of resources.
Aarhus Convention	<ul style="list-style-type: none"> - public participation in the negotiation and implementation of programs and plans dealing with environmental matters
Guiding Principles for Sustainable Spatial Development in the European Continent	<ul style="list-style-type: none"> - developing strategies adapted to the local context; - controlling the expansion of urban areas (urban sprawl) - regenerating deprived neighborhoods; - carefully managing the urban ecosystem; - developing effective, but at the same time environmentally-friendly public transport; - establishing planning bodies to coordinate the planning and implementation of measures; - conserving and enhancing the cultural heritage; - developing networks of towns.
EU SEA Directive on the environmental assessment	<ul style="list-style-type: none"> - provisions for high level protection of the environment; - contribution to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development
Application of the Aarhus Convention to EC institutions and bodies	<ul style="list-style-type: none"> - guaranteeing the right of public access to environmental information; - ensuring that information is progressively made available and disseminated to the public; - providing for public participation concerning plans, programmes and policies; - granting access to justice in environmental matters.
Territorial Agenda of the EU	<ul style="list-style-type: none"> - strengthening of polycentric development and innovation; - new forms of partnership and territorial governance between rural and urban areas; - promotion of regional clusters of competition and innovation; - strengthening and extension of trans-European networks; - promotion of trans-European risk management including the impacts of climate change; - strengthening ecological structures and cultural resources as added value for development.
Leipzig Charter on Sustainable European Cities	<ul style="list-style-type: none"> - overview of the strengths and weaknesses of cities and neighborhoods; - definition of consistent development objectives and a vision for the urban area; - coordination of the different sectoral and technical plans, policies and investments; - focused use of funds by public and private and sector players; - coordination of the levels and the involvement of citizens and stakeholders.

Documents	Guiding principles and measures
Green Paper on Territorial Cohesion	<ul style="list-style-type: none"> - coordinated public policies at different levels; - better account of territorial impacts; - improved multi-level governance; - the need for functional approaches ; - territorial cooperation as a clear EU asset; - reinforced evidence base - better territorial knowledge.
Spatial planning. Key Instrument for Development and Effective Governance with Special Reference to Countries in Transition	<ul style="list-style-type: none"> - involvement of stakeholders early in the process and continued communication and dialogue; - agreement on spatial development principles, objectives and strategies; - development of a spatial planning evidence base; - fair and consistent procedures; - a simple framework plan that provides certainty and offers opportunities for flexibility; - a flexible process to address unanticipated consequences and design sustainable solutions; - application of appraisal and feasibility technique; - integrated urban and rural strategies to ensure that sectoral interests work in concert; - leadership, strategy and the coordination of resources – the key foundations of implementation.
Urban dimension of cohesion policy	<ul style="list-style-type: none"> - integrated approach to urban planning and the bottom-up principle; - promotion of sustainable urban development as a strategic priority; - administrative capacity building of both vertical and horizontal urban governance; - partnership principle.
Toledo Declaration	<ul style="list-style-type: none"> - principles of integrated, smart, sustainable, cohesive, inclusive urban development; - measurement criteria related to environmental protection, economy, social sector and urban, architectural and cultural planning

Table 2. Overview of the relevant general documents with key points related to spatial planning and urban issues

1.2 Documents oriented to guiding regional and local planning policies and practice

These documents, which also include a research study, were adopted by local and regional authorities and professional associations, and they were formulated in accordance to specific urban issues (such as informal settlements). Together with the first group of documents, they present a complementary framework, and have been considered as recommended texts.

Institutions	Documents
Civil society and associations of local and regional authorities	Charter of European Cities and Towns towards Sustainability (the Aalborg Charter, 1994) and the Aalborg Commitments (2004)
European Council of Spatial Planners (ECTP)	New Athens's Charter (2003)
Stability Pact for South Eastern Europe	Vienna Declaration on Informal Settlements in South Eastern Europe (2004)
Congress of Local and Regional Authorities of the Council of Europe	European Urban Charter II, Manifesto for a new urbanity (2008)
United Nations Economic Commission for Europe (UNECE) Committee on Housing and Land Management	Self-made cities, In Search of Sustainable Solutions for Informal Settlements in the UNECE Region (2009)

Table 3. Overview of the selected specific documents, presented in chronological order

Charter of European Cities and Towns towards Sustainability

(the Aalborg Charter, EU Conference on Sustainable Cities and Towns, 1994)

The Agenda 21 principles adopted at the Rio Summit in 1992 became more tangible two years later at the EU Conference on Sustainable Cities and Towns, held in Aalborg (Denmark). The Aalborg Charter acknowledges the historic role of cities and towns as centers of social life and guardians of culture.

The Aalborg Conference laid the foundations and established the main requirements for sustainability in European cities and towns. The Charter presents the role of European cities and principles of sustainability integrated in local urban policies. It addresses the issues of urban economy, social equity, sustainable land-use planning, mobility, responsibility for global warming and pollution. It also mentions the rights to self-governance given to cities. Cities make a commitment to collaborate with all sectors of their communities – citizens, businesses, interest groups – and to use the political and technical tools available for urban management to work towards global sustainability. It encourages cities to establish local action plans (Local Agendas 21) in the medium and long term and makes a commitment to strengthen inter-authority cooperation and to relate this process to the actions of the European Union.

New Athens's Charter

(The European Council of Town Planners ECTP, 2003)

The European Council of Town Planners (ECTP) has promoted the shared vision of integration of European cities. The main scope of the vision rests on the Connected City – as a system harmoniously integrating social, economic and environmental connectivity. Social connectivity includes social balance, involvement of citizens, multi-cultural richness, connections between generations, social identity, movement and mobility as well as facilities and services. Economic connectivity is achieved by a balance between globalization and regionalization, the competitive advantages of the cities, polycentric urban networks and economic diversity. Nature, the landscape, open spaces and generally healthy cities are key elements of environmental connectivity.

This 2003 version of the famous modernist Charter of Athens is addressed primarily to professional planners working throughout Europe and those concerned with the planning process – to give direction to their actions.

European Urban Charter II, Manifesto for a new urbanity (Council of Europe 2008)

The Congress of Local and Regional Authorities of the Council of Europe adopted the European Urban Charter (1992), the Revised European Urban Charter (2005) and the European Urban Charter II, Manifesto for a new urbanity (2008). The Manifesto aims to establish a body of common principles and concepts enabling towns and cities and their inhabitants to meet the challenges facing urban societies. It is an invitation to local authorities, in all their diversity, to implement the principles of ethical governance, sustainable development and greater solidarity in public policies.

The Manifesto seeks to foster the cohesion and sustainability of urban society, based on an integrated approach to urban governance and development. It offers a new model of urban living and governance, laying down principles for building and managing an urban environment adapted to local needs and covering the various aspects of urban life - ecology, biodiversity, urban planning and development, sustainable consumption, public spaces, access to the economy, culture, education and health care. It urges territorial authorities to place people at the heart of public action in urban planning and development, paying particular attention to the needs of the most vulnerable. This new design fits into the overall scheme of efforts to establish a new citizen-centered urban environment, a setting that incorporates the various aspects of the lives of all population categories, including children, the elderly, minorities and people with disabilities.

Vienna Declaration on Informal Settlements in South Eastern Europe (2004)

On the sub regional level, the Vienna Declaration⁹ on National and Regional Policy Programs on Informal Settlements in South-Eastern Europe identifies this issue as a priority and invites national and local policies to legalize and improve informal settlements in a sustainable way. This declaration, signed by the majority of line ministers in the SEE region, advocates that preventing the formation of future informal settlements is critical and that it should be done through sustainable urban management, principles of good governance and adequate capacity-building.

Self-made cities: In Search of Sustainable Solutions for Informal Settlements in the UNECE Region (United Nations Economic Commission for Europe UNECE, 2009)

This is a study that provides a general overview of the phenomenon of informal settlements and the ways this challenge can be addressed. Emphasis has been given to practices that can facilitate access to affordable land and housing and improve the livelihoods of residents in informal settlements, and in general, to strategies that stand to better the physical, social, economic and environmental situation of informal settlements. The critical factors affecting the formation of informal settlements have been related to several major interrelated changes: rapid urbanization and influx of people into select urban areas; unrealistic or insufficient planning regulations and inefficient land administration; wars and natural disasters leading to the massive movement of people to places of opportunity and safety; and poverty and the lack of low cost housing and serviced land. In particular, poverty and social exclusion have been identified as key drivers of the formation of illegal settlements in most UNECE countries.

⁹ Vienna Declaration on Informal Settlements in South Eastern Europe was signed in 2004. by Albania, Macedonia, Montenegro, Serbia, and UNMIK Kosovo.

The following table presents main features of the recommended declarations and reports

Documents	Guiding principles and measures
Aalborg Charter	<ul style="list-style-type: none"> - responsibility of cities and towns for sustainability - notion and principles of sustainability - sustainability as a creative, local, balance-seeking process; - urban economy towards sustainability; - social equity for urban sustainability; - sustainable land-use patterns; - sustainable urban mobility patterns; - responsibility for the global climate; - prevention of the poisoning of ecosystems; - citizens as key agents and community involvement; - instruments and tools for urban management towards sustainability.
New Athens's Charter	<ul style="list-style-type: none"> - the shared vision of integration of European cities; - Connected City.
European Urban Charter II	<ul style="list-style-type: none"> - ethical governance; - sustainable development; - greater solidarity in public policies.
Vienna Declaration on Informal Settlements in South Eastern Europe	<ul style="list-style-type: none"> - accepting and legalizing informal development - sustainable urban management; - principles of good governance; - capacity building.
Self-made cities, In Search of Sustainable Solutions for Informal Settlements in the UNECE Region	<ul style="list-style-type: none"> - there is no "one-size-fits-all" solution to address the problems of informal settlements; - policies must be based on the understanding that they are spatial manifestations of social inequality and on a comprehension of the complex and multidimensional nature of social inequality; - joint and inclusive approaches to governance would ensure better results in relation to informal settlements interventions; - strategies for informal settlements must be based on a clear understanding of the nature of deprivation and should pursue an integrated, people-focused and place-based approach; - informal settlements must be part of a well-designed system of land management committed to providing people with affordable access to serviced land; - there must exist a pro-poor spatial planning system based on the principles of sustainable development; - people's knowledge and access to information should be improved; - spatial planning and zoning regulation are necessary, and recording of land uses should be made transparent and available to all; - urban administration policies should meet current social, environmental and economic needs.

Table 4. Overview of the selected specific documents and their key points

Concluding comments

The extent to which urbanisation is managed depends upon the planning system in each country. It is predominantly the domain of national, but also local and regional governments. A large variety of urban planning systems and cultures exist; however, their effectiveness depends on the level of liability, their scope, the planning culture and history, and also on the extent of influence of national governments on spatial planning. In the case of South Eastern European countries, attention should be paid to the simultaneous existence of three institutional patterns: those rooted in the previous socialist system, those created by the informal sector and those designed by policies consistent with a market driven economy (Petrovic, 2005).

The countries involved in the EU integration process have been faced with new requirements related to adequate standards in the consolidation of socio-spatial inequalities¹⁰, given by the directions of different documents. Strong planning legislation and an open governance process have been recognized as key to the urban content and integrated territorial policy approaches.

The selected and other relevant documents referenced in this chapter are listed separately in the Bibliography.

¹⁰ The negative effects of weak urban management, represented in urban sprawl, have been widely recognized – consumption of land, loss of agricultural land and open space; decay of downtown areas; social segregation; poor access to services; high costs of public services; traffic congestion; increase in fuel consumption and air pollution; destruction of biotopes and fragmentation of ecosystems.

2. Overview of the planning systems

In this introductory analysis we shall highlight the main differences between the planning systems in 13 LGAs¹¹ and progress towards their accommodation of new conditions of social and economic development.

First, looking at the administrative division that corresponds to planning levels, we have divided the countries into two groups: 1) those in which planning systems operate with two administrative levels and 2) those in which planning systems operate with three or more administrative levels.

In order to create grounds for comparison, the current hierarchy of spatial and urban plans in Serbia is taken as a reference, while the main type of local plan, used as a model for the analysis of key legislation issues, was the spatial plan of the urbanized territory of the municipality. This type of plan (a town's master plan, commonly known as the General Urban Plan), exists everywhere except in Montenegro and Slovenia.

The hierarchical links between the plans were also explored, as well as their effectiveness in horizontal and vertical coordination.

The incremental transfer of responsibilities from the central to the local level in managing the processes of spatial and urban planning is underway. In this overview, we also explore responsibilities - who prepares and who adopts the plan, including a brief glance at professional capacities - plan design organizations.

Special attention was paid to the executable capacity of plans, i.e. their ability to serve as a basis for issuing planning or building permits.

2.1 Administrative division

Some of the entities have a two-tier system (central and local) of government, even when some regional and provincial divisions exist. Standard two-tier system is reported by ALVRS, SOS, SCTM, ZELS, UoM, AKM and AAM. In many countries regional division exist, but only

¹¹ Association of Albanian Municipalities (AAM), National Association of Municipalities in the Republic of Bulgaria (NAMRB), Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina (SOGFBiH), Association of Towns and Municipalities of Republic of Srpska (ALVRS), Association of Municipalities of the Republic of Croatia (UoH), Association of Kosovo Municipalities (AKM), Congress of Local Authorities from Moldova (CALM), Association of the Units of Local Self-government of Republic of Macedonia (ZELS), Union of Municipalities of Montenegro (UOM), Association of Communes of Romania (ACOR), Standing Conference of Towns and Municipalities (SCTM), Association of Municipalities and Towns of Slovenia (SOS), Union of Municipalities of Marmara, Turkey (UMM).

for statistical purposes, without a complete governing structure. Romania is divided into counties as corresponding administration structure at this level and has also regions not as governance structure but for statistical purposes and for coordination of EU programs. In Turkey and Croatia there is administration at the province level. In Moldova there are districts. Bosnia and Herzegovina has extremely complex administrative system (two asymmetric entities – BiH Federation and the Republic of Srpska with the special Brčko district belonging to both entities; and with the BiH Federation consisting of 10 cantons).

The metropolitan areas of large cities are most often equal to provinces, where those definitions exist (Chisinau municipality in Moldova, metropolitan area of Belgrade city in Serbia). In Turkey, metropolitan area is overlapping in two provinces (Istanbul and Kocaeli)¹².

All planning related laws are adopted at the central level (with the exception of FBiH, (Bosnia and Herzegovina) where it is done at the regional level or even the sub-regional-canton level).

2.2 Type of plans

All countries have developed a typology of planning documents, mainly relying on a planning structure inherited from the past. On the other hand, the development of each typology, especially at the local level, is based on the need to adjust the number and types of plans to the new conditions of development and increase the flexibility of the planning framework. As a result, this causes frequent changes in the legislative framework and an unclear position and purpose of certain types of plans.

Territorial level	Type of documentation and relations	Administrative structure	Form Approval competences
National	Territorial development strategy of Romania	Romania 41 counties and Bucharest municipality	Integrating strategic documentation Government decision / Law
	National spatial planning plan (PATN)		Strategic documentation on specialized sections - Law - Parliament
Zonal	Regional zonal spatial planning plan (PATZR)	One of the eight development regions	Strategic documentation on specialized sections - Law - Parliament
	Zonal spatial planning plan - inter-county, inter-municipalities, inter-comunal, periurban (PATZ)	One or more territorial administrative units (County, municipality, town, village)	Strategic documentation which follows increase the cooperation and solutions for common problems - Local council decisions - County council decision
County	County spatial planning plan (PATJ)	County	Strategic documentation which shows the development directions for the county - Local council decisions - County council
Local	General urban planning plan	A territorial administrative unit (municipality, town, village)	Local strategy for urban planning which regulate the land use - Local council decisions
	Zonal urban planning plan	A part from the territorial administrative unit	Documentation which detail the regulations for the land use and building places - Local council decisions
	Detailed urban planning plan (PUD)	One or several plots	Documentation which regulate the building place - Local council decisions

Figure 1. Romania - The planning hierarchy

¹² In Turkey, metropolitan area is defined as a circle of 100 km in diameter and its central point is located in the center of a province. The metropolitan area is defined if the province has population of more than 1 million.

This study has made an inventory of all the plan types in all countries, dividing them into three levels, national, regional and local, following the administrative division of the territories under study.

National level plans

All entities have a national spatial plan for their entire national territory foreseen by law. In some cases, as of UoRH, ALVRS and SCTM these plans are considered to be the country's development strategies. In the Republic of Srpska (Bosnia and Herzegovina), on this level, there are two documents – the Spatial Plan and the Spatial Development Strategy. The national spatial plans have in the majority of cases a 20-years horizon, while in some cases, such as Serbia, it is 10.

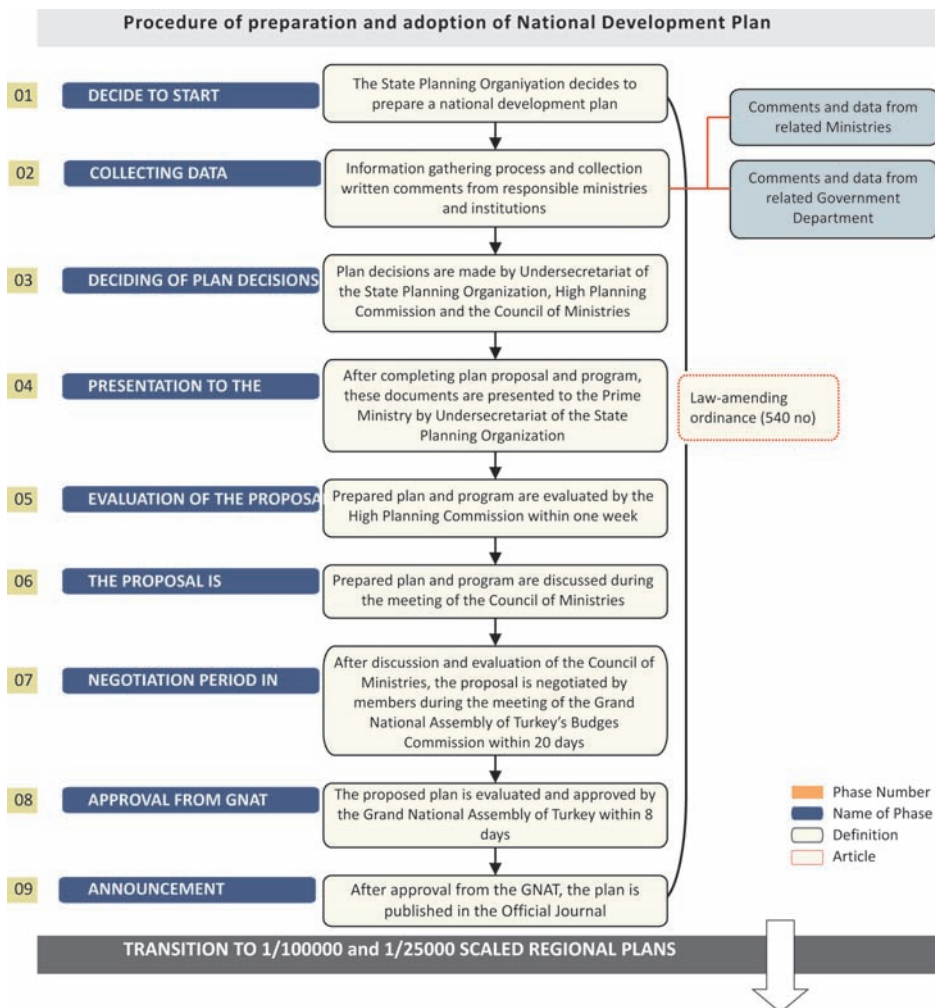


Figure 2. Turkey - Procedure of preparation and adoption of National Development Plan

In many cases, these plans are produced by a specialized state spatial planning agency (UoRH, ZELS, SCTM, AKM, ACoR, NAMRB, UMM, CALM). It is common everywhere that plans for areas of national interests are adopted at central level. These include the spatial plans for areas of special purposes such as national parks, nature parks, waste dumps, water accumulation and water supply sources, territories for exploitation of minerals, inter-regional infrastructure and transportation corridors. These plans are usually adopted by national parliaments, while in Serbia, Turkey and Albania this is done by the central government. In FBiH (Bosnia and Herzegovina) some detailed plans envisaged by the spatial plan of special interest for FBiH, are adopted at the central level, but that could be also done at cantonal level. In Macedonia, the plans contained in the Government program can be adopted through an expedited procedure.

In some entities, there are additional specific plan types adopted at the central level. In the Republic of Srpska, (Bosnia and Herzegovina), besides the already mentioned spatial development strategy for the whole territory, there is a strategy for special purpose territories. In Montenegro there are State Location Study and Detailed Spatial Plan. In Slovenia there are Detailed plans for larger infrastructural objects.

Regional level plans

It has already been mentioned that none of these entities have strong regional divisions with fully fledged administrations, with governing, legislative and fiscal capacities. Rather, the system of plans usually follows the administrative divisions (formal or just statistical) to transmit national spatial development objectives to the local level. These types of spatial plans can be found in all reports, except in cases of SOS, UoM and AKM. These plans connect programs adopted at the district or regional level with sector programs and other development programs adopted at the national level.

This type of spatial plan usually covers territories corresponding to NUTS 2 and NUTS 3 levels¹³, while there are also plans that are considered as regional, but are, in fact, supra-local (covering territories of few municipalities, not a whole region). Those are plans covering the territory of provinces and metropolitan areas. The number of types and hierarchical levels of sub-national and supra-local spatial plans varies a lot and is usually directly related to the size of a particular country. For example, Romania is divided into 8 development regions (NUTS 2), each having its own spatial plan. Macedonia has identified the development regions that have regional plans, although there is no regional level of government.

Plans are approved by national, regional and province level governments, where these exist.

In some entities, the law foresees spatial plans exceeding the vertical hierarchy of administrative divisions. In those types of plans, several counties or local governments sharing common development interests produce a joint plan. Examples of this kind are the Inter-county Zonal Spatial Plans and the Inter-town Zonal Spatial Plans in Romania and the Joint Regional Plans for the territory of two or more LG units in the Republic of Srpska, (Bosnia

¹³ The Nomenclature of territorial units for statistics, abbreviated as NUTS (from the French Nomenclature des Unités territoriales statistiques) is a geographical nomenclature subdividing the territory of the European Union (EU) into regions at three different levels (NUTS 1, 2 and 3, respectively, move from larger to smaller territorial units). NUTS 2 has a population of 800,000-3,000,000 and NUTS 3 from 150,000 to 800,000, while in general NUTS 1 means the territory of the whole country.

and Hercegovina) and the Zonal Spatial Plans in Moldova. These plans are adopted by the county councils in Romania and the national assembly in the Republic of Srpska (Bosnia and Hercegovina), respectively.

The metropolitan areas of capitals and large towns are usually covered by the spatial plans that can be considered as regional.

Some specific spatial plans at the regional level are related to zones with special purposes (tourism or landfills, for example) or certain sector issues (like the Environmental plans in Albania).

Most of the national strategic spatial planning and other development documents rely on regionalization and decentralization as the effective instruments for their implementation. Planning experience at the regional level varies and largely depends on the size of regional units, administrative capacity and authority, and powers transferred from the central level. The experience of Turkey shows that the success of the implementation of regional plans can be affected by political parties, which often see these plans as a catalyst for regional divisions (fear of isolation). However, the central government has accelerated the preparation of all regional plans in Turkey.

Local level plans

The local planning level, which is the focal area of this research, is the most complex part of the planning system in these countries, and is very often subject to continuous change. How efficiently a city is able to develop depends crucially on its spatial/urban planning framework.

A key issue that can directly influence a plan's efficiency is whether a building permit can be issued based on the plan¹⁴. Other issues, equally as important, and certainly falling within the knowledge and experience of the planners, are the questions of the protection of the public interest and the sometimes conflicting economic development prospects.

Usually, the planning framework is divided into spatial plans, which cover the spatial development of an entire municipal territory, or into urban plans, which cover the spatial development of towns or urban areas. Uniquely in Montenegro, this kind of division was recently abandoned, and there is now a single developmental plan (Spatial-Urban Plan), that is seen to better suit the territory of Montenegro and the size of its urban agglomerations.

A conditional division that can be made between the plans at the local level is between those having a strategic development dimension and those that are execution oriented and regulatory. There are many cross-cutting issues that local level plans are challenged by today:

- economic efficiency, in terms of a fast planning procedure and sufficient provisions to issue building permits anonymously in a standard, time-bound procedure;

¹⁴ Determining the efficiency of a plan solely by how fast the issuing of building permits is can be problematic. If other aspects of a plan are neglected (social, environmental, economic, etc.), then the conclusion can be drawn that the most efficient plans are those that allow virtually any type of construction, with minimum of government control, and issuing building permits with minimum criteria.

- enough flexibility to address development opportunities or non-regulated urbanization (informal construction) ;
- solving territorial conflicts between citizens and local government, citizens and developers, between citizens themselves and between developers and local governments;
- recognition and strong control of environmental impacts, both in energy consumption and pollution, present today in almost all activities of society;
- poverty reduction and social segregation and many others.

This means that local level planning should result not only from stipulations made by the higher level planning, but to a large extent from all local policies and become their efficient tool, while at the same time, preserving key resources (both land and built structures) for the future. In the following chapters, we will try to tackle issues of efficiency and quality at the local level and understand to what extent local planning is fulfilling these roles.

Local spatial plans

Spatial plans covering the entire territory of a municipality, including minor settlements, are reported by SOGFBiH, UoRH, SCTM, AKM and CALM, while other entities use regional spatial plans. The unique case of Montenegro has been explained previously. Turkey has a special Strategic Plan and Performance document that covers the development of the whole territory but is not a spatial plan. In Turkey, spatial plans for areas of special purposes are part of local level planning (specific plans for privatization, tourism, industry, etc.). Their place and role in the planning hierarchy will be discussed below.

Local spatial plans have a dominant strategic character. They establish long-term policies and the objectives of spatial development and determine the purpose of planned land use in the municipality. They are usually developed for a period of 15-20 years.

Besides their strategic character, these plans may have a regulatory role which ensures their implementation in most of the municipal area, as is the case described by SOS, SCTM, UoM, AKM and CALM. The regulatory functions of the plan usually apply to those territories where the spatial plan does not require preparation of urban plans. In Slovenia, the local spatial plan consists of two parts – an operational and a strategic part of the plan. The aim is to have a single document that consolidates all relevant issues of municipal spatial development, and at the same time provides the necessary basis for the issuance of planning and building permits. In Slovenia, the strategic part of the plan is adopted as a stand-alone document called the strategic spatial plan. Interweaving different levels of spatial and urban planning can lead to confusion with regard to their implementation.

In all entities under review here, the local spatial plan is defined by regulations adopted at the national level, except in FBiH (Bosnia and Herzegovina), where they are developed and adopted in accordance with cantonal legislation. Preparation of plans is usually under the jurisdiction of municipalities, which, however, often neither have inadequate technical

and administrative capacities, nor sufficient funding for the development and implementation of plans. In most cases, the approval of local spatial plans falls under the jurisdiction of higher level, except in Republic of Srpska (Bosnia and Herzegovina), Kosovo, Romania, Bulgaria, Moldova and Turkey. A key element of the process of local spatial plan preparation is the coordination of the draft plan with the policies and plans of ministries and other higher levels of authority. A line ministry is usually responsible for monitoring the compliance of plans.

Local urban plans

These plans define the urbanized territory, most often delimited from the rest of the municipality as a built up area. Here, a distinction in approach and type of plans is made between towns and smaller settlements. Usually the chief urban planning document in towns, the type of plan as General Urban Plan is the plan with strategic development role. Smaller municipalities usually have an operative regulatory planning document. The exceptions are in Albania and Romania, where a General Urban Plan is made for small municipalities as well; in Turkey, where there is a Rural Master Plan; in Moldova where the GUP is made for settlements with a population greater than 1,500. In Slovenia, GUP does not exist. Instead, there is a spatial plan serving as a three-level document (all three levels are prepared and adopted through the same process). The Spatial plan for the municipality consists of: a) strategic part and land use plan, b) urban development concept and c) general regulatory provisions.

In some entities, the GUP is not a basis for issuing building permits. This is the case in Montenegro (with its *Spatial-Urban Plan*), Serbia, Bosnia and Herzegovina, Macedonia and Turkey. In these entities, there is a special regulatory plan following the GUP that defines the rules for construction (in Montenegro, the detailed plans for the specific area of municipality serve this function). In Croatia, GUP can be a basis for issuing building permit but for some areas within GUP area more detailed plans can exist if they are foreseen within the GUP (General Regulation Plan or Detailed Regulation Plan). In FBiH (Bosnia and Herzegovina), if the regulatory plan doesn't exist, permits are issued based on the expertise of responsible institution, in accordance with the existing plan.

Detailed urban plans or urban design plans for a delimited area of a municipality define construction rules in detail (usually comprising the preliminary architectural design). This type of planning document exists almost everywhere, in large towns or small settlements. Very often, this kind of plan is initiated and financed by the interested investors and are subject to change.

2.2.1 Hierarchy links between the plans

A clearly established hierarchy is characteristic of all the planning systems under review. Generally, mutual relations and the conditionality of plans are based upon the "downward" hierarchical principle, and they imply the obligation that plans of smaller regions have to be harmonized with those of the broader regions. Apart from provisions regarding to their implementation, higher ranking plans most often also contain guidelines for the elaboration of lower ranking plans for smaller regions within their catchment area. Plans of an

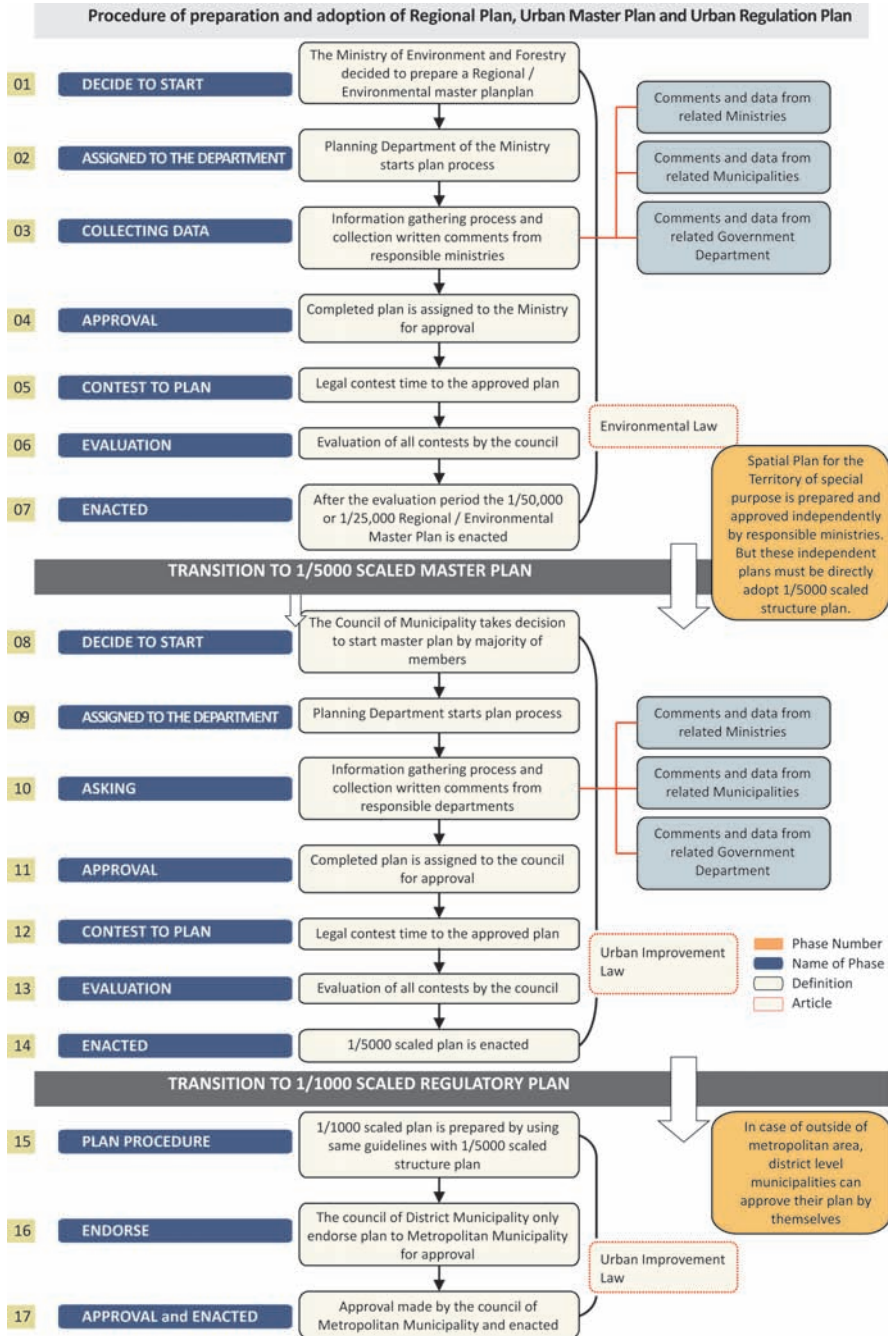


Figure 3. Turkey - Procedure of preparation and adoption of Regional Plan, Urban Master Plan and Urban Regulation Plan

equal level, as a rule, must be mutually harmonized, which means that it is necessary to also establish their horizontal coordination, apart from the vertical one.

In some countries, like Turkey, the envisaged possibilities of changing the plan may be an important factor to disrupt this hierarchy. In Turkey, plans which have a special purpose are elaborated independently from the total planning hierarchy (separate plans for tourism, industry, large residential areas, etc.) in order to shorten the time for their adoption. These plans often contradict decisions made at higher planning levels.

The principle of vertical hierarchy has also been established for competences to verify the mutual harmonization of plans and competences to monitor their implementation. The most important instruments in this regard are approvals from a superior level, given for the final planned proposals by administrative bodies in charge of planning at the national and lower (regional, cantonal) levels.

The complex structure of most planning systems, having in mind the number of types of plans at various planning levels, requires a complex vertical and horizontal coordination. Generally, all levels of planning should be independent yet mutually connected through consensus, coordination and cooperation. This should secure the preservation and development of strategic state and local interests. However, such a planning method continuously faces great difficulties. The local level most often has no financial resources, nor expert capacities to comprehend development strategically and integrally, within the context of the overall national and/or regional policies of spatial development. Used to the “downward” hierarchical planning system, the local level most often accepts given solutions and guidelines, without any significant influence upon the decisions made at the higher planning level, which have direct implications for local development.

2.3 Institutional framework in planning

Given the fact that planning is an activity of the utmost public interest, its institutional framework is deeply embodied in the public sector at all administration levels. In the planning process, the basic institutional setup comprises a) a public authority commissioning the plan (although sometimes this might be a private interested party at the lowest planning levels), b) a professional planning organization that will produce the plan and c) a public body, approving the plan. Before the final approval of the most important plans, consent will be required from the line institutions, usually at a higher level.

Besides the process itself, there are also institutions preparing regulations (laws, decrees, rules, manuals), such as the line ministries at the central or regional level and LG departments and those that adopt them (the central, regional or local parliaments or governments). In the planning processes, we can also identify experts or political committees, advisers to those commissioning the plan, professional chambers of planners, professional organizations servicing the process (facilitators of participation, for instance) and educational institutions (university education and specialized trainings).

In this study, we have analyzed who is doing what in the planning process. The governments (central, regional, local) through their specialized departments are responsible for preparing a plan within their authority. For national level plans, it is usually the ministry

responsible for spatial planning, or in some cases, like in Croatia, Turkey, Serbia and Macedonia there is a special spatial planning agency, established and supervised by the government. In Macedonia, the state agency prepares both spatial and urban plans for the local level, and these plans are envisaged (financed) by the state in its annual program. These plans are approved by the line ministry. Those agencies are responsible for the strategic spatial development of the country, which includes organizing the preparation of individual plans, monitoring them and legislative activities.

2.4 Concluding comment

The planning systems follow the same basic principles and are regulated by law in most of the analyzed NALAS members. Except in Turkey, post-socialist transformation and transition processes have decisively influenced the profiling and functioning of the planning systems (the legal frameworks within which they are formulated have been focused primarily upon relaxing administrative procedures and attracting investment, sometimes at the expense of public interest and the protection of key resources) and have accentuated the differences between new member states in the EU accession process and the developed West-European states regarding the way in which they comprehend planning.

The transformation of planning systems has been accompanied by uneven decentralization regarding the management of the planning process. The role of central authorities, both in defining the legal framework and in controlling the planning process, continues to be dominant.

The system of plans usually follows administrative divisions (formal or merely statistical). All of these entities have a similar two-tier system of government (central and local), even when some kind of regional and provincial division exists. In many of them this division exists only for statistical purposes, without any governing structure. All the planning related laws are brought at the central level (with the exception of Bosnia and Herzegovina, where this is done at the regional - entity level or even sub-regional-canton level). It has been common practice that plans for regions of national interest are adopted at the central level; the adoption of plans at the local level has been mainly within the competences of local authorities, in accordance with the proclaimed principle of decentralization.

The planning systems have a developed typology of plans, particularly at the local level. The diversity regarding the typology of plans is supposed to result in a higher efficiency of the planning system, which has not always been the case. However, the big number of plan types can complicate and slow down development. The flexibility could be better achieved by relaxing the regulations, and decreasing the number of plans for one area (city, region), instead of having spatial plan, general urban plan, plan of general regulation and detailed urban plan (urban design) overlapping for one same area, as it is the case now in majority of the observed countries. The unclear position and role of certain plans in the system may create vagueness regarding their implementation and difficulties in horizontal and vertical coordination.¹⁵

¹⁵ This may be the case with the Spatial-Urban Plan in Montenegro, Urban concept for settlements in Slovenia, Settlement schemes in the Municipal Spatial Plan in Serbia.

Having in mind lack of financial, human, administrative and other resources in majority of NALAS members, together with the necessity to make plans more flexible in order to accommodate rapidly changing demands, a solution is to decrease the number of different plans – to introduce some kind of ‘planning minimalism’, in relation to available resources for production and implementation of plans¹⁶.

The clearly established hierarchy of plans has not been always been accompanied with an adequate practice regarding enforcement and monitoring their implementation. Another issue is the lack of consensus regarding the key planning positions of all participants in the planning process, which has to ensure the preservation and development of strategic state and local interests. Adequate mechanisms according to which local administrations are to take part in the adoption of plan related decisions at a higher level have not been sufficiently developed. The influence of local administrations upon decisions adopted at a higher level is weak, and this does not contribute to an efficient vertical coordination and cooperation.

A substantial characteristic of plans has been their strategic, namely their regulatory role. National and regional spatial plans are strategic documents, and the majority of spatial and general plans at the local level have also strategic component. A serious deficiency is their inadequate connection with different local development policies. The regulatory role, as a rule, is played by regulatory plans at the local level, and in certain cases the basis for issuing a building permit may also be the spatial and general urban plans, which opens room for a more flexible approach to development changes, although it may also lead to vagueness regarding their implementation. The efficiency of plans that contain elements of both spatial and urban planning (the Spatial-Urban Plan in Montenegro, the Urban Concept for settlements in Slovenia, the Settlement scheme¹⁷ in Spatial Plans of municipalities in Serbia) has not been sufficiently tested in practice.

Frequent and manifold changes to the law cause unnecessary formal harmonization of contents of plans with mutually related legal frameworks. The result is the legal uncertainty of all participants in the planning process. Also, the complexity and long duration of planning procedures makes it more difficult to accomplish a substantial harmonization of plans with development needs and flexibility in implementation.

16 M. Vujosevic in his book (Vujosevic, M. 2004. *Racionalnost, legitimitet i implementacija planskih odluka: novije teorijske interpretacije i pouke za planiranje u tranziciji (Rationality, Legitimacy and Implementation of Planning Decisions: New theoretical Interpretations and Lessons for Planning in Transition)*. Beograd: Institut za arhitekturu i urbanizam Srbije (IAUS). (in Serbian)) gives the example of Czech Republic, which was very successful in the transition so far, and in implementation of changes in planning system as well. They have simplified the planning drastically at the beginning of the post-socialist transition towards market economy, and then, as society was economically growing, gradually developed new, more complex generations of planning documents.

17 The term ‘Scheme’ was introduced in Serbian planning by 2003 Law on planning and construction, and it represents translation of French term schéma, which in French planning legislation stands for a plan for specific area, or specific sector (similar to Detailed Urban Plan in Serbian planning). Many experts are strongly criticizing the introduction of a term in Serbian planning, and claim that its meaning and role in planning are not clearly defined by the Law – is it different type of detailed plan, does it have higher or lower rank than detailed plan, etc. (Pajovic, D. 2006, ‘Urbanisticki zakoni juznoslovenskih zemalja: Bosna i Hercegovina, Crna Gora, Hrvatska, Makedonija, Slovenija, Srbija’ (Urban Legislations of South-Slavic Countries: Bosnia and Herzegovina, Montenegro, Croatia, Macedonia, Slovenia, Serbia). Out of all the countries observed in this research, Serbia is the only one having this type of plan in the legislation.

In all LGAs, a necessary institutional framework has been established and competences for the implementation of the planned process have been defined. This includes organs and institutions in charge of preparation, control, adoption and approval of plans. The problem is insufficient development of administrative and expert capacities and insufficient capability to adequately manage the planned processes and understand their complex substance, particularly at the local level. Also, the lack of funds for the preparation and implementation of plans, particularly in smaller municipalities, has substantially reduced the efficiency of preparation as well as the effects of implementation.

In order to make plans more efficient and effective – the current paradigm, prevailing in all the NALAS members should be changed. It is still modernist, 'blueprint', with end-in approach, with plans being an end in themselves, and not a tool for fostering urban, spatial and economic development of a city or region¹⁸. The new urban plans, that are in place today in developed countries are, however, based on principles and presentation techniques that are much different than those of the modernist era. The main shift is in new concept of strategies (sectoral and general development), that should provide general directions of development by defining key strategic goals and specific actions that are necessary to achieve the goals. The plans themselves are very simple, sketch-like, and are used more as a basis for dialogue and discussion on specific development projects, rather than giving definite solutions.

¹⁸ This paradigm was prevailing in almost all western European countries in the period before 1980s, and the main tool of this type of planning was the Master plan, or General Urban Plan. The approach was abandoned in developed countries during the 80s, when urban planning itself was heavily criticized, and the planning rationality, methods, processes, legitimacy, etc. were questioned, which led to the movements that were suggesting complete exclusion of planning and regulation of urban processes through sole reliance on market mechanisms. In 1990s planning gained significance again, mainly through communicative/collaborative trends that tend to define new theoretical framework for the discipline, as the shift towards liberal concepts during 80s, in much of developed countries (primarily USA and UK) led to certain disappointments and realization that market alone cannot regulate certain social and especially environmental issues.

	Type of local plans				The local authority approves the plan				The plan has a strategic role				The plan is a basis for issuing building permit			
	MSP	GUP	GRP	DRP												
SOGFBH	✓	✓	✓	✓	+*	+*	+	+	+	+	-	-	-	-	+	+
ALVRS	✓	✓	✓	*	+	+	+	+	+	+	-	-	-	-	+	+
UORH	✓	✓	✓	✓	+	+	+	+	+	+	-	-	+	+	+	+
SOS	✓	**	✓	✓	-		-	+	+		+	-	+		+	+
ZELS	✓	✓		✓	-	+		+	+	+		-	-	-		+
UOM	***	***		✓	-	-		+	+	+		-	+	+		+
SCTM	✓	✓	✓	✓	-	-	+	+	+	+	-	-	+	-	+	+
AKM	✓	✓		✓	+	+	+		+	+	-		+	+	+	
ACOR		✓	✓	✓		+	+	+		+	-	-		+	+	+
NAMRB		✓	✓	✓		+	+	+		+	+	-		-	-	+
CALM	✓	✓	✓	✓	+	+	+	+	+	-	-	-	-	+	+	+
UMM	****	✓	✓	✓	+	+	+	+	+	-	-	-	-	+	+	+
AAM		✓		✓		-		+		+		-		-		+

Table 5. Overview of planning at the local level

MSP

Municipal Spatial Plan

GUP

General Urban Plan

GRP

General Regulation Plan

DRP

Detailed Regulation Plan

(*) Urban Design

(**) General concept plan for each settlement as a part of Municipal Spatial Plan

(***) Spatial-Urban Plan

(****) Strategic Plan and Performance

✓ exists

+ yes

+* in accordance with cantonal legislation

- no



3. Selected key issues of local urban planning

The key issues relevant to urban planning at the local level will be explored in this chapter. Based on the input provided by local experts, the following issues will be analyzed in separate subchapters:

- Influence, authority and responsibility of local governments in the planning process,
- Flexibility and efficiency of local plans and procedures,
- Citizen participation in the process ,
- Issues related to the content of the general urban plan, and
- Land management issues.

The purpose of the study is to assess the extent of achieved democratization and decentralization of authority to the local level in this sector, and analyze the extent to which local governments are able to independently and effectively manage spatial development of their territory. The ability of local governments to dispose and manage land is a precondition for real decentralization, and the key issue behind the implementation of planning policy. Besides this, other issues have been analyzed, such as:

- Responsibility and accountability of local authorities for the preparation, drafting and adoption of plans at the local level;
- The ability to implement integrated urban planning in conjunction with other local policies;
- The level and quality of cooperation between state and local institutions in the planning process.

Flexibility of planning in the countries in transition is an imperative and the content of the plans and procedures of the planning process are being redefined in almost all observed countries. It will be studied to what extent the plans are able to quickly and adequately respond to rapid changes in development priorities and needs, while still being a reliable instrument for protecting the public interest and key spatial resources and provide investment security¹⁹.

¹⁹ The question in post-socialist countries is also how to define public interest. Since the collapse of socialism (in which public interest was defined by the state and was basically the only one considered as relevant and fostered

The purpose of broad participation of citizens, citizen information about the course and importance of the process, and adoption of instruments for influencing planning decisions is to facilitate the formulation and adoption of planning documents through broad consensus. Flexibility and participation together should provide efficiency and effectiveness of plans.

We shall explore the shortcomings of the present legal procedures and practices that regulate this area, and possible ways of their improvement.

A General Urban Plan is a document that exists in most planning systems. It will be the chosen type of plan on which all the selected key issues will be explored. Its content and development methodology will be analyzed through its main roles - strategic and regulatory.

We shall also discuss other issues relevant to urban planning such not directly linked with production of plans, as the efficiency of land management – land protection, acquisition, redistribution and evaluation.

This selection of key issues reflects the personal views of the research coordination team, and as such, it is certainly subject to criticism. However, it is expected that some local government associations will initiate more detailed study or changes regarding the issues of their interest, based on the results of this study.

3.1 Authorities of local government

The European continent is facing major challenges in its development. In the last three decades, in its more developed, western part, development at the regional level has been strongly advocated as the optimal solution for underdeveloped areas, such as Portugal, Spain, the southern Italy and others, for reducing large economic differences within the European Union. The process of regionalization was followed by adequate territorial development policies and strategies and supported strongly by the European family through Structural Funds. Rapid global change and radical turns in the world economy are changing this development paradigm by focusing on cities, as motors of progress. This process in fact is today imminent in the whole world and rapid urbanization has become a common phenomenon in all developing countries.

All this applies to the NALAS members LGAs participating in this study. Consequently, the administrative process of decentralization, present in almost all transitional countries, is overcome by emerging local issues such as, in our case, the issue of sustainable development, poverty, social cohesion, and abuse of resources. Many EU and international documents indicate the key role of local authorities in addressing these issues, pointing out the main upcoming challenges.

The Leipzig Charter on Sustainable European Cities, which was adopted informally by the European line ministers in 2007, emphasizes the strengths and weaknesses of cities and neighborhoods, giving some guiding principles on how local authorities should position themselves. This document stresses the need for an integrated approach in defining con-

by plans), there is a multiplicity of private and group interests, with new public interest not defined yet. So, it is unclear what plans should protect. Broad participation could be one tool for defining public interest as well.

sistent development objectives and a vision for the urban area, coordination of different sectoral plans, policies and investments, focused use of public and private funds and coordination of the involvement of citizens and other stakeholders.

In order to cope with severe problems, now considered to be local, the local governments need to have adequate capacities. This means:

- a) The transfer of responsibilities and authorities, followed by adequate financial transfers from the central level,
- b) Establishing an institutional framework and developing its capacities through adequate staffing and education,
- c) Developing local regulations, policies and strategies,
- d) Raising the educational level of local government officials, as well as local decision makers,
- e) Transparency and democratization of decision making through active involvement of citizens.

Emphasis in this study is given to exploring the legal powers and capacities of local governments, the distribution of responsibilities in the planning process, linkages of plans and planning processes with local policies and some crucial property issues.

3.1.1 Municipal land ownership

The planning process and further development strongly depend on land ownership status, regarding public investments and informal settlements, but also any future Greenfield or Brownfield development. However, the General Urban Plans most often don't identify land ownership.

With the exception of UMM, which hasn't gone through a half century of socialism, when practically all land in cities was nationalized, all the other LGAs, participating in the study are operating in former socialist states. They have been going through a similar process of denationalization, restitution or conversion of the right of use into private property, starting from the early 1990s. In Macedonia, this process started as late as 2005 (whilst denationalization started in 2000). However, in some of the entities, the privately built-up land in towns, nationalized after the WWII is still owned by the state, which is the case reported by AAM and SCTM. In Serbia, the Planning and Construction Law of 2009 introduced the conversion of land ownership from state ownership with right of use granted to municipalities into the ownership of existing buildings by residents or new developers.

Public land ownership has been transferred to local governments in most entities, except in Serbia and Albania. Albania is undergoing the process of making an inventory of local public ownership. In Kosovo, public land and property ownership is split between social enterprises under the jurisdiction of local governments, and public enterprises managed by the Privatization Agency. The rare cases of state ownership of public land that can be found in Croatia and Slovenia, apply to the infrastructure of national interest.

An important issue is control of land use and management by LGs. In some cases in Turkey, with the aim of better validating land, the municipalities very often change the existing

planned land use into highly profitable purposes (like “land for petrol stations”), which may sometimes damage public interest and prevent competition. Adequate mechanisms to protect the common good and control the use of public land are not developed in any territory of NALAS operational region.

3.1.2 Issuing and approving local plans

Across the region, decentralization has brought many new responsibilities to the LGs, as is the case with competences in spatial in urban planning. It is however questionable whether the professional, financial and technical capabilities of local governments increased to a level sufficient to meet their responsibilities.

Among most members of NALAS, the municipalities have authority to issue local by-laws (except in Croatia, Macedonia and Turkey), mostly in the form of municipal decisions. Also, in most cases, municipalities have the authority to prepare local plans. In Montenegro, there is a possibility that State government takes over the responsibility for preparing these plans. Small municipalities don't yet have capacities to undertake the preparation of plans and they are often assisted financially by the central government, or the regional and cantonal government in the Federation of BiH (Bosnia and Herzegovina). The General Urban Plans are adopted at the local level, based on national level legislation, with the exception of FBiH (Bosnia and Herzegovina), where the local general plans are within the jurisdiction of cantons (based on the cantonal law) and Albania, where important plans are approved by the state government's Council of Ministers.

What body within local administration is in charge of preparation of the plans? In general, in larger municipalities there is usually a specialized department responsible for preparing and monitoring the implementation of urban plans (except in the Republic of Srpska (Bosnia and Herzegovina), Bulgaria and Turkey), while in smaller ones, there is no such department. In those cases, the municipal council bears responsibility for preparing the plans. The previously mentioned departments are in charge of issuing building permits, except in Montenegro (where permits are issued by the ministry) and Slovenia (permits are issued by local offices of the central government).

In almost all cases, the law recommends that the municipality establish a permanent or an ad hoc expert body, responsible for supervision of the planning process (planning and technical committees, municipal technical bodies or departments, expert councils, etc.). Often, these bodies are not only formed from experts, but from politicians as well. In other cases where the law does not foresee it, these committees can still be established, as in Montenegro, or in Moldova, where the controlling role is usually given to the city architect or a group of experts of the competent ministry. In Turkey, this kind of external experts' supervision of the planning process has not been legally foreseen.

The LGs are not always given the authority to issue and approve plans with a strategic dimension for development of their territory. In many cases, specific authorization/ approval from the higher levels of government (the cantonal authorities in FBiH (Bosnia and Herzegovina), county authorities in Croatia and national authorities in Albania, Slovenia, Serbia and Macedonia) is required for the municipal spatial plans and general urban plans of major cities. This authorization / approval usually applies to compliance with higher level plans and the legality of the plans. In some cases, (in the situation of competing

interests among different stakeholders) the higher levels of control can decide about the final approval of individual planning decisions (Slovenia).

It can be concluded based on the above findings that local governments still do not have a desirable level of independence in this area, in spite of the institutional framework being in place and powers vested on them by law. The greatest weakness has been observed regarding administrative (organizational, professional, technical) and financial capacities, especially in smaller municipalities. The still dominant role of the state in regulating and controlling the planning process significantly reduces the interest of local governments to dedicate full attention and become responsible for strategic spatial development. This problem is not restricted to small urban centers, but applies equally to large cities. This is because the mayors of large urban areas are often seen by central government as challenging their political authority and interests – especially where the political parties in power centrally and locally are different.

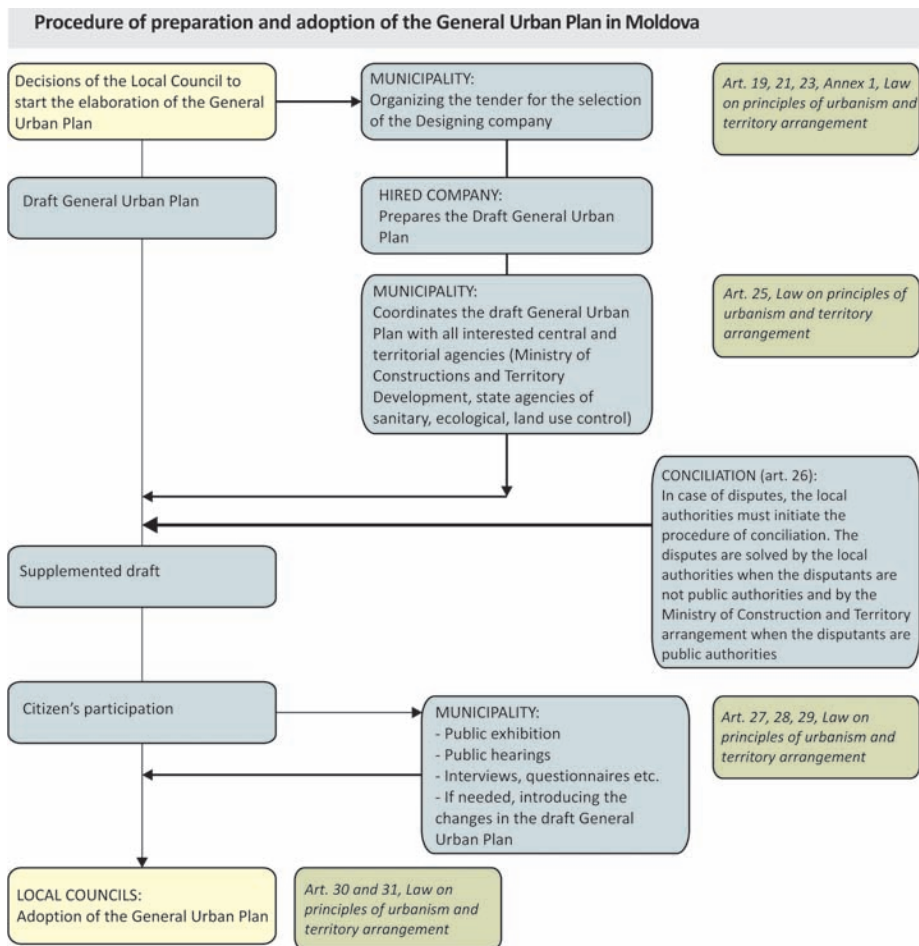


Figure 4. Moldova - Procedure of preparation and adoption of the General Urban Plan

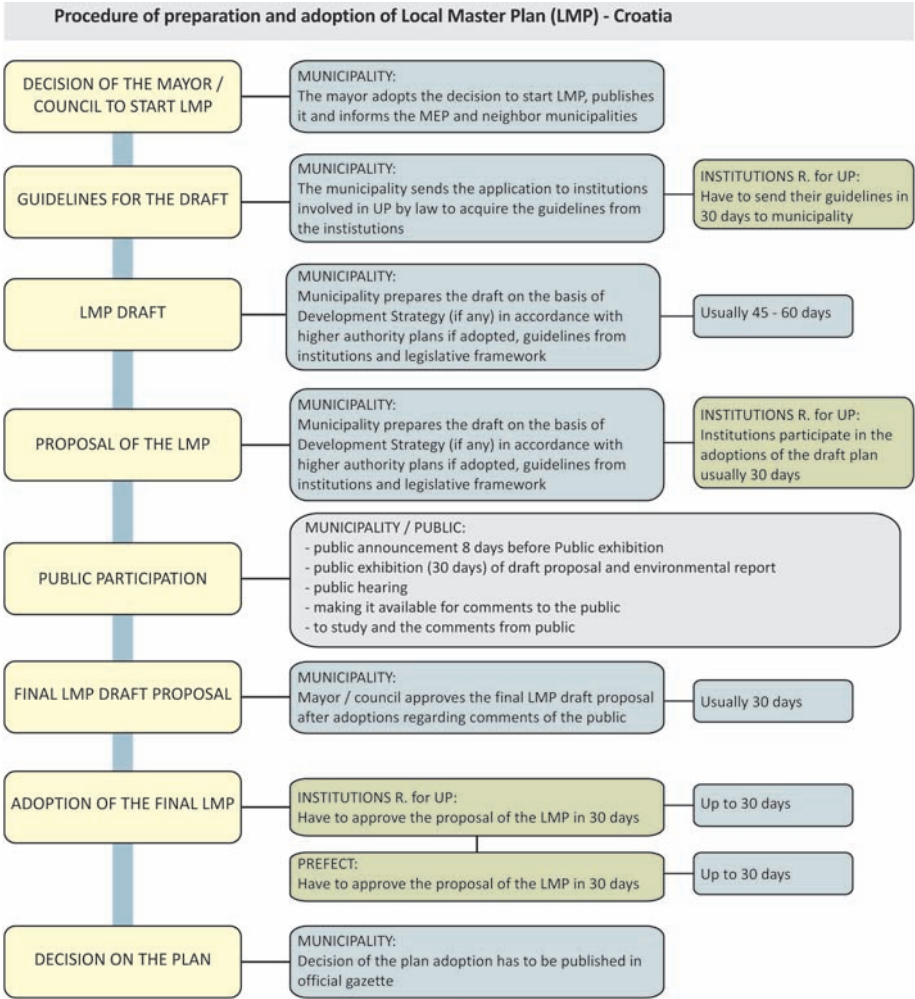


Figure 5. Croatia - Procedure of preparation and adoption of Local Master Plan

3.1.3 Producing plans

The professional part of the planning process, the production of the plan, might be organized in several ways. In the former socialist countries, there were public institutes in all major towns and even bodies within the local governments, staffed and specialized for producing all sorts of plans for local purposes. During transition, this activity has been gradually moved towards the open market through privatization and development of new specialized companies. Today, all the participating LGAs state that there are private and public companies, equally competing to win a public tender for preparation of a plan.

Besides this option, SCTM, UMM and SOGFBH, stated that there are also special cases in which a specialized municipal company can be directly requested by municipal government to produce a plan. Other rare options include the situation in which the planning department of the local administration is given this task (UMM) or when the county level planning departments produce plans for some smaller municipalities but according to the public procurement (UoRH). AKM reports that in Kosovo, the municipal planning departments sometimes produce the plans by themselves, if they are requested so.

With the exception of Turkey, where disseminating information on public hearings can be organized by the company producing a plan, the municipal department is in charge of this activity.

Production of the plan is a complex and highly professional activity of the utmost public interest. The LG can assign this task to a specialized public institution, to a body that is part of the local authority or to a specialized private company. Which option is better is difficult to conclude. On the one hand, fair competition produces quality, but on the other hand, if competition is decided solely by lowest price, the quality will certainly suffer. Transparency is also not an issue to neglect. Finally, the quality of the plan is considered rather as matter of professional ethics and the general knowledge and continual training of planning professionals. It is concluded that the efficiency of an existing model of producing plans highly depends on the level of development of the planning profession in that country.

3.1.4 Involvement of local elected officials

The temporary, elected political part of local government (the mayor, the local council, sometimes heads of departments), being responsible for policy formulation and its implementation, should be fully involved in the planning process, given the nature of planning as a key instrument of governing local territory. In all LGAs it is reported that this participation exists, but only in less than half (UoRH, ZELS, UOM, NAMRB and AAM) it is assessed that politicians truly contribute with substantive policy input. In all other LGAs, the involvement of politicians is seen as purely formal.

In addition, the involvement of politicians (both from the government and opposition) rarely comes before the planning starts (only in Romania and Albania). New legislation in Albania does foresee that politicians are obliged to formulate the strategic goals of a plan, but this is not yet the practice. Politicians officially participate in the assessment of draft plans, but only formally. Local politicians also always take part in public hearings, but again, rarely make any substantive contribution.

There is no developed practice of joint effort between professional planners and politicians, resulting in compromise in finding optimal solutions. This is a consequence of many factors, of which the most decisive relate to a lack of interest by politicians and their insufficient knowledge about planning issues and the importance of the entire process. The plans do not always have executive outcomes in practice and planning is not truly considered as a governing instrument. The capacities and knowledge of elected officials, but also of municipal staff are insufficient, which adversely affects the quality of design and implementation of the plan, especially the capacities that apply to the strategic elements of the plan. Finally, planning regulations are not always efficient and the planning process

is considered to slow. In a contrary, they are often unduly restrictive and administrative procedures are invariably too cumbersome, time-consuming, expensive and also of an uncertain outcome, all of which inhibits investment and the ability of ordinary citizens to conform to official norms.

3.1.5 Linkage of plans with local policies

In many cases, the existence of any structured local development policy can be questioned. On the other hand, a majority of local experts point out that plans are most often based on strong inputs from local policies. The extent and quality of these inputs may differ significantly among local governments within the same LGA (Serbia). In Moldova, however, the plans are not perceived as linked with local policies. In Montenegro, given the size of the country, the respective policies are tied to the plans exclusively at the national level. Changes of plans usually happen as changes in local policies (Macedonia, Albania). In Slovenia, the plans always represent a compromise between local interests and central government stakeholders (ministries and agencies).

The municipalities are not always obliged to have an implementation plan that follows the GUP and that will take into consideration and synthesize all existing plans together with the GUP. This is the case with some EU members (Romania, Slovenia), even though the EU has recently made it mandatory. In fact, only a few remaining LGAs (SOGFBIH, ALVRS, UoRH, ZELS, NAMRB) stipulate this request. Similarly, not all public institutions are obliged to comply with GUPs when realizing their plans and programs (primary services infrastructure, health, education, welfare or similar sectors).

Closely related to the previous chapter, it seems that local urban plans, even those with a strategic dimension (such as GUP) do not result from local policies and therefore may be seen as a mere compliance to legal requests to cover the territory with a certain type of plan. The in plan preparation do not often comply with analysis and the plan at the end becomes a mere "wish list". In addition, GUP is often not implemented in compliance with other implementing plans and discrepancies occur regularly nor are GUPs respected by the sectors other than construction.

3.1.6 Cooperation with local and national institutions

The official, institutional collaboration with public institutions is vital to the efficient provision of necessary data for preparing and implementing any type of plan. If this is lacking, the quality of the plan and the efficiency of the process will be diminished. Cooperation with all public institutions exists and it is usually formal in nature. In some cases, as at the local level in the Republic of Srpska (Bosnia and Herzegovina), Macedonia and Montenegro, some local partners provide substantive inputs to planning. At the national level, it is common that cooperation is assessed as purely official and often inefficient, although the level of cooperation varies between institutions. The central government stakeholders are often bureaucratic and sometimes very rigid (Slovenia). In some cases, readiness for cooperation on the side of government institutions depends on specific circumstances or interests (Bosnia and Herzegovina). However, there are rare examples of excellent cooperation with national level institutions as, for instance, in Serbia in the field of environmental protection (while at the same time, Serbia is very weak in urban planning).

Cooperation with public institutions is crucial for the quality and speed of production of the plan, both at the level of data exchange, and in formulating the strategic objectives of the plan. In fact many important stakeholders, such as the utility companies (power distribution, water and sewage, waste collection and disposal, transport, etc.) should be mandatory linked with planning and good and equal collaboration with such institutions. Be it national or local, this is essential. It seems, however, that this is usually not the case and that public organizations tend to monopolize and trade in the information they possess, while on the other hand, the planning institutions may neglect the need to receive substantive and strategic inputs from such organizations.

3.1.7 Conclusions and recommendations

Conclusions

The planning process and further development strongly depends on the status of land ownership. Local government ownership of land is crucial for public investments, regularization of informal settlements, and any Greenfield or Brownfield development. However, the GUP type of plans most often don't identify land ownership. An important issue is control of the use of public land and protection of the public interest in cases of abuse and non-transparent plan changes.

The LGs are not always given the authority to issue and adopt plans with strategic significance for development of their territory. In some cases, the strategic development of local territories is decided at a higher level (national or provincial) and the local GUPs are not adopted by local parliaments.

It is legally foreseen that municipalities establish a permanent or an ad hoc expert's body, responsible for supervision of the planning process. Very often, these bodies are not only formed from experts, but from politicians as well. In cases where the law does not foresee it, these committees can be established or the controlling role can be passed to the city architect or to the planning department of the local administration.

Local politicians are rarely involved in the planning process in a proper way. Indifference and insufficient knowledge of planning and the importance of the planning process are common reasons for the unsatisfactory involvement of local politicians, who often participate only formally. On the other hand, it is not unusual that local politicians directly interfere with planning decisions in order to serve the interest of individuals or political groups, which does not necessarily comply with the public interest. There is no practice of planners and politicians working together to find compromise for optimal planning solutions. It is the responsibility of planners to prepare well founded policy options with an assessment of the relevant social, economic and environmental implications so that politicians can then make informed decisions, hopefully as a result of widespread public consultation and participation.

The plans do not always have real executive output in practice. Failure to align the interests and priorities among the various stakeholders may result in failure to implement some planning provisions within the specific area or set timeframe. Professional planners should be trained to be protectors of the public interest, particularly as this affects the more vulnerable sections of society and fragile environments or cultural heritage.

Planning is usually not truly considered as a governing instrument. Plans are the long-term documents, whose objectives do not always coincide with the short-term objectives set within the term of the current government. A discontinuity of government often entails a discontinuity of planning objectives and implementation of the plan. Discontinuity also applies when the political parties in power at national level are different from those in power at local level.

Capacities and knowledge of elected officials, but also of municipal staff are insufficient or the planning regulations are not efficient and the process is too slow. They are often unduly restrictive and administrative procedures are invariably too cumbersome, time-consuming, expensive and also of an uncertain outcome, all of which inhibits investment and the ability of ordinary citizens to conform to official norms.

Local urban plans, even those with strategic roles do not sufficiently reflect local policies. Therefore, they may be seen as mere compliance to legal requests to cover the territory with a certain type of plan. Moreover, the GUP is often implemented neither in compliance with other implementing plans, nor is it respected by sectors other than construction.

Cooperation with and between public institutions is crucial for ensuring the quality and speed of production of the plan. This cooperation is sometimes related to data exchange, but also to formulating strategic objectives of the plan. In fact, many it should be compulsory that important stakeholders, such as the utility companies (power distribution, water and sewage, waste collection and disposal, transport etc) are linked with planning. Public institutions tend to monopolize and often “trade” in information they possess, while on the other hand, planning institutions may neglect the necessity to obtain substantive and strategic inputs from such organizations.

Recommendations

a) Vest in local governments the right to own and dispose of land

The right to own and dispose of land should be vested on local governments by law, in order to be able to autonomously and effectively manage land and properly plan their spatial development.

b) Establish internal control mechanisms for changing the use of land owned by local government

Municipalities should adopt efficient land-use control mechanisms in order to prevent misuse of land (change in land uses to inappropriate but highly profitable uses that are detrimental to the public interest).

c) Give local governments full authority for the preparation, adoption and implementation of local plans

Local governments should have adequate legal authority to manage the planning process and implement local plans. Transfer of responsibility and authority should be accompanied by adequate financial resources transferred from the central to the local level.

d) Improve and regulate the practice of the joint work of professional planners and local stakeholders

The practice of the joint work of professional planners and politicians in the planning and implementation phase of the process should be improved by adopting adequate guidelines. At the same time, more efforts should be made to raise the level of awareness of local government officials and policy makers concerned, as a precondition for improving the practice of joint work.

e) The strategic aspect of local plans should be improved by establishing stronger links with local policies

The strategic aspects of local plans should be improved by establishing stronger links with local policies. Basic planning laws and bylaws should stipulate the obligations that will ensure vertical and horizontal compliance of the program for implementation of plans with other plans, programs, and development policies (especially those related to regulation and management of urban land).































































































f) Establish cooperation between the planning institutions and public institutions at the central and local levels

Local government should adopt a decision on mandatory cooperation between the planning institutions and local public institutions in data exchange but also in formulating the strategic objectives that determine the quality and effectiveness of the plan. It is recommended that adequate protocols be established with key central level institutions (like cadastre).

g) Improve procurement procedure to ensure the plans' expected quality of quality

It is important to establish requirements for the proper and uniform quality of plans, especially those having strategic importance for the local community. In cases when there is an inadequate supply of professional planning services on the market and the public procurement procedure cannot provide the expected level of quality, local governments should have the legal possibility of signing direct contracts for the development of strategic plans with public planning institutions (which have an adequate professional and technical capacity to develop the quality plan), in compliance with financing terms and conditions recommended by the professional chamber.

Table 6. Role, authorities and involvement of local authorities and relations between planning and local policies

	 Exists and efficient  Exists, but not efficient  Doesn't exist	Municipalities own the land and have autonomy in its disposal	Municipalities have authority to issue and approve GUP	Local elected officials are substantially involved in the process	The plans are interlinked with local policies	Cooperation with local and national institutions	Efficiency of plan production and quality of plans
SOGFBIH							
	b	c	d	e	f	g	
ALVRS							
	b	c	d	e	f	g	
UORH							
	b	c		e	f	g	
SOS							
		c	d	e	f	g	
ZELS							
	b			e	f	g	
UOM							
	a, b	c		e	f	g	
SCTM							
	a, b		d	e	f	g	
AKM							
	a, b		d	e	f	g	
ACOR							
	b		d	e	f	g	
NAMRB							
	b			e	f	g	
CALM							
	b		d	e	f	g	
UMM							
	b		d	e	f	g	
AAM							
	a, b	c		e	f	g	

3.2 Flexibility of planning to development opportunities

Local governments, but also planning legislation are often the cause of very long and slow procedure of making and adopting local urban plans. A common opinion in many entities is that the process hinders development and economic activity *per se* and doesn't take into account real needs and possibilities. On the other hand, static planning serves investment security and prevents risky developments and corruption.

In transitional countries, although planning systems were not originally similar, the economies were basically centrally planned and the planning paradigm was favour of progressive development. Today, the situation is completely different, depending much more on unpredictable opportunities that nobody can afford to miss. At the same time, the number of players and (non) legitimate interests involved in utilizing the urban space has significantly increased, which is yet another substantial difference when compared with the period of socialism, during which the state had a monopoly and was the key player in the urbanization processes.

Today, collaborative planning is supposed to be the effective paradigm, but still, the legal framework, administrative methods and practices are not efficient enough to become one of the key tools for managing local development.

This chapter explores the shortcomings of the process from the procedural point of view. It will assess levels of collaboration with development stakeholders, the flexibility of planning procedures and the duration of the process.

3.2.1 Involvement of the business sector in the planning process

It is reported by a majority of the LGAs under study that investors that can strongly influence economic development are involved when they are interested and are able to give substantive inputs to the plans. Typically, their formal participation has been enabled through initiating procedures for the elaboration of plans and through public discussions. In Slovenia, the private sector has been able to contribute inputs at all stages of the planning process; if consistent with local policies, these inputs are always accepted by the local governments. In some entities, although there are no specific legal provisions for formal involvement, the business sector is involved regularly and informally and is certainly influencing the planning (as reported by UMM, AKM). However, by ZELS, UoM, ACoR and CALM, it is reported that the business sector is not involved substantively in the planning process.

Some entities (like AKM reported happened recently) have developed legislation setting a framework for public-private partnerships, which in fact, gives space for efficient collaborative planning. This evolved from the need to build trust between the local authorities and investors. Although this type of cooperation relates primarily to the business sector, it has been assessed that similar experience may be applied also to the housing sector and other sectors related to urban development.

The problem with investors is often a lack of adequate laws that will enable urban land reallocation, and even when envisaged by law, this does not function in practice (Croatia, Serbia).

In all entities, the pluralization of interests, among which those pertaining to the business sector and its market-based decisions and initiatives are dominant, inevitably brings to focus the scope of their impact upon the unfolding of the planning process. On the one hand, the business sector has been included formally, utilizing possibilities offered by the established planning regulatory framework. A more significant issue, no doubt, is the acceptance of requests imposed by investors and the adjustment of urban development to interests of a certain group, which is often recognized as “urbanism led by investors”. This inevitably leads to reconsidering the role and responsibility of local authorities and planners, as the key actors in the planning process.

The key function of planning is to stimulate investment in ways which protect the public interest – especially by protecting the vulnerable groups and fragile environments. If the interests of investors, particularly powerful ones are given excessive support, this will undermine the legitimacy of planning. It is a difficult balance to strike, especially for local governments keen to attract investment.

3.2.2 Changing the plan and effects of demand driven planning

The procedure for changing the local plan is seen as a very important factor of flexible approaches to economic development which require a rapid response to investment possibilities. On the other hand, if made easy, the changes can provoke unwished social, environmental, economic or cultural impact and seriously hinder the public interest.

In almost all the entities, legal provisions enabling interested bodies or citizens to initiate production of a new plan or the change of an existing plan are present. In Moldova, Kosovo and Albania it is not legally foreseen, but is possible in practice. In many cases, investors have the right to produce a plan by their own means, as is the case in Turkey. Decisions regarding initiatives to change the plans are typically made by the local administration. It is common that the lower level detailed regulatory plans are made by the investors for the land they develop in accordance with relevant legal procedures. However, Investors should not be permitted to prepare regulatory plans – that is a task for the local authorities.

A majority of the local experts report that changes of plans are frequent and that they sometimes endanger the public interest. This is common in fast developing areas, primarily in attractive tourist zones (UoM, NAMRB), but also in the cities. ACoR stressed that urban development in Romania became uncontrolled due to the numerous and frequent changes to the General Urban Plan, thus generating many problems, particularly in regard to traffic.

The changes of plans are not seen as harming the common good in Turkey, Moldova, Kosovo and Macedonia. The reasons for this are found in:

- long lasting procedures that prevent investors from changing plans (CALM, AKM),
- efficient mechanisms, but sometimes interrupting compliance with upper level plans (UMM),
- mutual mistrust and,
- local governments are not capable of financing regular revisions of plans and they gladly accept initiatives of investors, working jointly (ZELS).

Another important aspect, or side-effect, of the flexibility in changing a plan and also the flexibility in interpreting an existing plan can be lower transparency that favors private at the expense of public interest. It exists everywhere and in more than half of the LGAs it is seen as very significant. Slovenia, for instance, does not allow much space for flexible interpretation of plans.

The study has assessed the personal views of the planning experts on the occurrence of corruption in the planning process and in issuing statutory planning and building permits. It is anonymously reported that it exists, while in three LGAs it is seen as irrelevant (ZELS, UoM and CALM). This phenomenon is considered as significant by all other LGAs, regarding with big cities.

The legal framework offers the possibility to initiate elaboration of a plan or changes to the plan. However, insufficient efficiency and effectiveness of these changes may further generate informal development and the field for non-transparent implementation of partial interests at the cost of the public interest. The position of investors is interesting in this regard because on the one hand they stand for the market's influence upon planning procedures, and on the other they have been taking advantage of the possibilities of arbitrary decisions. Control and strategic guidance of spatial development and construction has frequently been substantially neglected.

3.2.3 Efficiency of the planning process and effectiveness of the plan

It is commonly observed that the long duration of procedures often endangers development opportunities, but sometimes it also prevents investors from undertaking initiatives that conflict with the public interest, creating land use and social conflicts. On the other hand, there are also situations with quick procedures planned to rapidly answer numerous investors' requests, which may also result in the previously mentioned negative consequences upon urban development (Romania). In some entities, to change a plan takes the same or a slightly shorter time than to produce and adopt a new one (FBiH (Bosnia and Herzegovina), Serbia). It is common practice for a change of a plan to take somewhere between 25% and 50% less time than the procedure for the development of a new one.

We have assessed the length of the process of producing a GUP. The longest minimal duration was reported by SOS (from 3 to 5 years), where after entry into force of the most recent law on planning only about 10% of plans have been adopted. 2 years was the most frequent minimal duration (FBiH (Bosnia and Herzegovina), Montenegro, Serbia, Albania, Bulgaria, while in Croatia, Macedonia, Kosovo and the Republic of Srpska (Bosnia and Herzegovina) it takes a few months less). In Moldova it takes 12 months, in Turkey 9 months and in Romania the minimum duration could take only only 8 months for small rural LGs (but it takes 3 even 5 years for big cities). The change of a plan takes from 24 months in FBiH (Bosnia and Herzegovina), to only 6 months in Romania, Bulgaria, Turkey and Albania.

Local experts have stressed a number of significant factors that impact the duration of the process :

- Efficiency in collecting all necessary data and efficiency of the firm which is developing the plan (ZELS),

- Elaboration of separate studies for the plan (SCTM),
- Number and substance of remarks put forward during public insight (UoRH),
- Frequent changes of planning-related laws and by-laws should be avoided, as they can significantly prolong the procedures under which the plan is elaborated due to constant requests for adjustment
- Insufficient number of reported requests by interested investors (plan preparation phase), their inadequate treatment (plan elaboration phase), or private and public interest very much in conflict so that it is difficult to harmonize them (plan implementation stage).

An important factor that shows the effectiveness of a GUP is its execution capacity. In Romania, Moldova and Bulgaria this type of plan may be used to issue a building permit. In Montenegro it is also possible, but only in cases of public infrastructure (roads, power lines, pipelines etc) and in Turkey, even the construction of public buildings (schools, hospitals, etc.). In Slovenia the adequate, but conceptually different, *Municipal Spatial Plan* consists of three levels of plans which are prepared and adopted within the same process: the *Spatial Plan*, the *Urban Concept Plan* for each settlement and the *General Regulatory Plan* which is a basis for issuing a building permit. In all other entities, the GUP does not have execution capacity and to issue building permits lower level detailed urban plans are necessary.

For guidance and sustainable management of urban development, the issues analyzed above are of key importance. Recent legislation focused primarily upon efforts to relax administrative procedures, without sufficiently elaborating the mechanism by which the planning process is managed. Adjustment of planning procedures generally has unsatisfactory effects, and there are numerous changes to the regulations. In most of the systems there was no adequate approach to the elaboration of the methodology and the content of the plan which should simultaneously have development capacities and also be efficient in its controlling role. It is also important to mention the role of the planners, who often lack sufficient knowledge regarding the complex functioning of the market system, its institutions, procedures, possibilities and limits; this also has an impact upon the efficiency and effectiveness of the planning process.

3.2.4 Conclusions and recommendations

Conclusions

Flexibility in planning is the common paradigm and one of the actual imperatives when it comes to redefining the planning practice. Greater flexibility means also more adjustability and readiness for new investment possibilities. In cases where other instruments are not efficient (planning regulations, land management, implementation rules) flexibility may result in an adverse outcome. Efficient mechanisms and institutional capacities that enable flexible responses to rapid changes in development priorities and needs and simultaneous protection of the public interest and key spatial resources are still pending. At the same time, the public interest should be identified and determined first and then the limitation to flexibility should be set.

Development within new market conditions, accompanied by a domination of capital and an unclear position of numerous involved stakeholders may seriously impede the sustainable development of cities. Apart from the short-term positive effects upon local economies, the consequence may be a permanent destruction of the values of existing resources (land) and the formerly produced general wealth. The other important aspect which may be endangered in circumstances of an unstable planning practice and of changing plans is the security of investment. It was demonstrated that all analyzed countries are probably closer to this scenario, which is obvious in countries with a significant level of informal settlements.

The regulatory framework offers enough space for business opportunities to influence plans. In most cases, the involvement of investors is formal and they do not equally collaborate with authorities, but rather they either impose their requests or they accept rigid and inflexible plans, ignorant to real needs and possibilities. That is, of course, fertile ground for non-transparent behavior, closing a vicious circle. Some improvements exist in seeking a correct format of cooperation with the aim of building trust between the stakeholders.

Plans change frequently and sometimes endanger public interest. The efficiency of the procedure under which a plan may be changed certainly contributes to economic development, but the end effect of flexibility in changing and interpreting existing plans may be less transparency, which favors private interest over public interest.

The complexity and long duration of planning procedures make it more difficult to substantially adjust the plans to developmental needs and to be flexible regarding implementation. Changes which occur within two years, which is how long this process has lasted in most of the countries, may be significant, particularly in towns undergoing rapid economic development. On the other hand, shortened planning procedures may exclude the necessary studies and analyses, the checking (harmonization of development priorities, justification of planned solutions) and controlling mechanisms (including the participatory ones), which in the long run may disrupt the strategic development of a given urban territory. This is why more and more the strategic plans are needed to provide the longer term, social and economic context, within which local action plans can be flexible and more responsive to market fluctuation.

Effectiveness in implementation of GUP depends on its executive capacities. If the strategic elements of the plan are not supported by the necessary regulatory elements and instruments of their realization, they do not contribute to an efficient realization of investments, to the protection of the urban space and the overall sustainable urban development. The trend in recent years in legal reforms is to unify strategic and regulatory plans within the frame of one document, which satisfies both key dimensions. However, it is significant that control and strategic direction of spatial development and construction is often neglected. Finally, if local authorities are not provided with sufficient financial and technical resources to implement powers allocated to them under decentralizations policies, they will fail.

Recommendations

a) **Improve legal framework to become sensitive to development opportunities**

Improve legal framework to become sensitive to development opportunities, but at the same time offer sufficient instruments to protect the public interest; PPP models provide a good framework for a fair and transparent collaborative process. Although it relates primarily to the business sector, similar models may also be applied to the housing sector and other sectors and policies related to urban development.

b) **Institutionalize collaboration between authorities, planners and interested investors**

Institutionalize collaboration between authorities, planners and interested investors through adequate local by-laws, ensuring full transparency of the process. Greater transparency and participation of interested investors in the initial stages provides better compatibility between the business sector and public interest in the later stages of development planning, especially in the stages of plan implementation. It is necessary to accurately prescribe the methodology of gathering and using the information about businesses and potential investors in the process of development planning.

c) **Develop efficient mechanisms for the protection of the public interest**

The laws and local regulations should provide for the development of efficient mechanisms for defining and protecting the public interest in all phases of the planning process, regardless of the ownership status of the land. This includes a constant and efficient monitoring system, periodical reporting of the assembly on the situation regarding the realization of GUP, control by the public, reexamination of the responsibility of functionaries holding power for decisions made and the consequences in case of disruption of public interest. A system of planned evaluation should be based upon a precise establishment of criteria and roles of the participants in the procedure (local administration, higher levels of government, experts, NGOs, the commercial sector, citizens, etc.).

d) **Increase the transparency of the planning process**

Adequate rules and protocols should provide for greater transparency of the planning process, and for mandatory participation of all the relevant stakeholders from the beginning, and ensure timely information for the public regarding the significance, goals, public interest, benefits and consequences of planning solutions. Public availability of planning documents should be ensured throughout all phases of the development of the plan. To protect the public interest, as well as for the adequate protection of public goods, the participation of the broader public in all planning phases is of decisive importance.

e) **Raise efficiency in production of plans**

Adequate rules and guidelines should provide a greater level of efficiency in elaborating and changing plans by defining an optimum duration of the planning

process and by simplifying procedures, but without excluding necessary research and controlling mechanisms, with the aim of maintaining the necessary level of the plan's quality. The protocols on cooperation should be established with the state and local institutions, upon which the speed and quality of the plan is highly dependent.

f) Ensure higher flexibility of plans

Adequate rules and guidelines should provide improvements to the methodological framework of urban planning with the aim to ensure that plans have a greater level of flexibility. Flexible planning solutions should increase applicability and the executive power of the plan. Possible guidelines include refraining from rigid provisions on the use of land; the elaboration of long-term plans which envisage multiple phases of development; and, if the pace of development is quicker than planned, the assembly shall take over the managerial role in the implementation of plans which "opens" the next step.

g) Define mandatory regulatory elements of the plan and mechanisms for their implementation

Adequate by-laws should normatively define the mandatory regulatory elements of the plan and the mechanisms for their implementation, in order to speed up the process of obtaining a building permit based on the GUP level plan.

Table 7. Flexibility and efficiency of planning procedure and effectiveness of plans

	Exists and efficient Exists, but not efficient Doesn't exist	Business sector influences plans without jeopardizing public interest	Legal instruments to initiate changes exist	Changing and interpreting plans transparent	Duration of the GUP planning process	Duration of small changes of the plan	GUP has execution capacities
SOGFBIH							
	a, b, c, d			d	e, c	e, c	f, g
ALVRS							
	a, b, c, d			d	e, c	e, c	
UORH							
	a, b, c, d			d	e, c	e, c	
SOS							
	a, c, d			d	e, c	e, c	
ZELS							
	a, b, c, d			d	e, c	e, c	f, g
UOM							
	a, b, c, d	a, d		d	e, c	e, c	f, g
SCTM							
	a, b, c, d			d	e, c	e, c	f, g
AKM							
	a, c, d	a, d		d	e, c	e, c	f, g
ACOR							
	a, b, c, d			d	c	c	
NAMRB							
	a, b, c, d			d	e, c	c	
CALM							
	a, b, c, d				e, c		c
UMM							
	a, b, c, d			d	c	c	f, g
AAM							
	a, b, c, d	a, d		d	e, c	c	f, g

3.3 Citizens' participation²⁰

The important documents promoting participation in planning, the Habitat Agenda (1996) and the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) gave a clear frame of linkage between environment and sustainable development and human rights, implying that all stakeholders should be involved in the planning process²¹. They stress the importance of interaction between the citizens and public authorities, as a precondition to establishing and maintaining accountable, transparent and responsive government. In this context, we explore how the wider public is involved in the process of production of a local plan, from its beginning until its final adoption by relevant administrative institutions.

While originally citizens' participation was recognized to be set within the political domain of human rights, the contemporary context expands the scope of its application, as a result of the progress of civil society and its standards. Under contemporary conditions, participation has been recognized as the technical demand of urban governance, but also as the core element in ensuring that planning has social legitimacy, along with mediation and coordination of different components and activities²². The increase in the number of stakeholders and demands in planning causes the requirements for the integration, definition and solution of problems to become more complex. A prerequisite for their solution is early recognition of uncertainties and possible conflicts in order to reduce the risks and undesired effects.

In practical terms participation ensures citizens' identification with their living environment and provides a sense of being a part of a governing process (deciding their future), raising of individual responsibility and good governance institution building through establishing trust between the government and the citizens. To aid the planning process, planners can get valuable and relevant information about the particular territory directly from the people living in it and, in the end, involve citizens and take their concerns into account so that they will be directly involved in the acceptance of the final product – the plan.

In this study, we have analyzed the nominal existence of legal frameworks for citizens' participation, specific rules and guidelines for the involvement of the public, the substance of these documents and the real effects of the norms and guidelines executed in practice. The personal views of local experts offer a valuable assessment of the real achievements of this democratic exercise and of the level of governance among participating NALAS members.

20 This chapter does not consider the participation of all public and private stakeholders concerned, except citizens. The other stakeholders in participation may vary according to type, purpose, size, significance of the plan. Their involvement in the process is elaborated in chapter 3.2

21 NALAS has published a participatory planning handbook, Introduction of Comprehensive Participation of Citizens as well as Governmental and Non-governmental Organizations in the Urban Planning Process in January 2010, which is foreseen as a tool to support the planning process in NALAS member LGAs

22 One of the problems in transitional countries is that many changes are introduced just because EU demands them, without real understanding why they are beneficial for the society, and in this case, for the planning process.

3.3.1 Legislation

In all the LGAs there are norms prescribing citizens' participation. In almost all of them there are respective provisions in the main spatial planning laws, while in Turkey, formal participation is foreseen only by the law on heritage protection and is related to citizens in protected areas. In Albania, participation is included in the actual draft of new regulations on territorial planning that introduces contemporary planning concepts. Kosovo legislation foresees procedures for public review in the by-law following the process of spatial and urban planning.

A few entities (as reported by SOGFBiH, ZELS, ACoR, AKM and CALM) have developed a detailed methodology and procedures for the involvement of citizens, formulating these through spatial planning laws, respective by-laws and ordinances (specifically related to participation) or have included them within the manuals of planning procedures. In Romania, citizen participation has been developed in detail (by formulating the required elements for informing and consulting citizens from the beginning of the planning process, and by reporting and even publishing the names of owners who can affect planning provisions in order to increase the transparency of the process). In Macedonia, the law stipulates the formation of a participatory body through which the public is involved in the planning process. This participatory body takes care that the attitudes, opinions and needs of citizens and legal entities are taken into account. The regulations governing citizens' participation are always made at the central level.

In general, the existing regulatory frameworks of the most advanced countries lack detailed procedures for involvement of stakeholders and citizens, for each specific type of plans (which require different levels of recognition of interest, types of complaints and degree of interest for participation in the planning process). The regulations are not always followed by appropriate manuals and handbooks for participation²³ for each particular plan type and selected phases of the planning process, which is found needed.

The precise legal definition of participation procedures, tools and responsibilities for monitoring the procedure raises the level of transparency and legitimacy of the process of making decisions about space. Current procedures often lack transparency and genuine democracy, while the purpose of formal involvement of citizens is often only to give legitimacy to decisions that have already been adopted.

3.3.2 Responsibilities

In all LGAs, municipal government through its respective bodies in charge of spatial planning is responsible for managing and facilitating the process of citizens' participation.

In FBiH (Bosnia and Herzegovina), bodies responsible for the preparation of plans are required to develop a *program for citizens' involvement in the preparation and drafting* of all planning documents, which defines the precise methods of involvement in all phases of document preparation and planning.

In countries where citizens' participation is common (such as in ACoR), coordination and facilitation of these activities is very often part of the contracted duties of the company

²³ Such as the NALAS participatory planning handbook

that drafts the plan. Examples of this practice can be found in Serbia, rather as an informal (agreed upon) way of cooperation and assistance to municipal offices which are often unable to successfully facilitate the process. In general, local government departments responsible for the plan are responsible for organizing citizens' participation.

In some countries, like Bulgaria, local governments inform the citizens, but facilitation of discussions is conducted informally, only by interested civic organizations.

Many local experts report that municipalities are often not capable of successfully implementing their legal duties in facilitating participation. For that reason, some hold that this task should be assigned to qualified organizations – the planning companies, NGOs or other private companies. Municipalities would then extend their role in monitoring the end-process and evaluation of final results. This, of course, implies additional budget resources and professional competence. The potential for civil society organizations channeling public interests in both plan formulation and monitoring deserves support.

It is generally reported that there is a need to build the capacities of municipal officials and professionals that will conduct this process. More knowledge about methods of increasing citizen participation is needed, as well as the involvement of a wide range of professionals for successful implementation of the process. Since the majority of planners also do not have sufficient skills and experience in communication and collaborative planning, education of all stakeholders is crucial for achieving and maintaining a successful planning process.

3.3.3 Informing and inviting citizens to participate and their abilities to affect the plan

Informing can be looked at as a first indicator of the democratisation of the planning procedure and a basic precondition of equal participation of citizens in decision making. All relevant international documents confirm this principle.

In all the entities under review, citizens are informed about the plan, although in various ways and at different stages in the process.

In more than half of the LGAs, LGs inform their citizens before the planning starts (SOGF-BiH, UoRH, SOS, UoM, AKM, ACoR, CALM and AAM). A decision about developing the plan is usually announced in the Official Gazette, the local media and on the website of the municipality. In Macedonia, citizens are informed about planning only through the annual program for the development of urban plans, but not before the beginning of actual development.

A unique case is found in Turkey, where citizens are informed of the plan only after its approval, but in practice, local authorities find different solutions to encourage citizen participation in the planning process (collecting comments and complaints from citizens before the planning process begins and seeking solutions to their requirements throughout the planning process).

We can draw a parallel between the way the information is communicated and the level of transparency in the planning process. This study has explored at which stages citizens were informed about the plan and invited to participate. In many cases, informing is not followed by the invitation to comment on the proposed elements of the plan and this can

be seen as a major difference in the quality of the participation among these countries. Lack of information is a serious barrier to the full participation of citizens in the decision-making process.

Informing citizens of the vital issues that concern them from the earliest stages and to maintain open communication, even during the stages when involvement of citizens is not legally foreseen, is crucial to raising the level of democracy of the process by voluntary participation procedures. This also helps build trust between the local government and the citizens.

In some entities, citizens are invited to participate by providing comments and complaints at several stages (before the planning starts, at the phase when priority objectives and concepts are established, and after the plan is drafted), as is the case of SOGFBiH, UoRH, ACoR, CALM and AAM. Citizens in Slovenia are not invited to participate in public hearings before the planning process, but they can make proposals or initiatives in writing. The proposals in line with general objectives are included in the plan. However, the level and quality of participation depend on the particular nature of the local government and also on the area for which the plan is being developed.

The common case is that citizens are invited to comment on the plans only at the end of the process, through public oversight of the draft plan. That is the case in Serbia, Republic of Srpska (Bosnia and Herzegovina) and Macedonia. Usually, at that stage, citizens are more active and give comments and express their complaints, most often related to land use, infrastructure corridors and density.

In Serbia, for instance, the General urban plan for a city of 200,000 receives up to 200 complaints and suggestions and it is generally common that written complaints are individually addressed. A similar ratio of complaints is reported by UoM, AKM, ALVRS while NAMRB and SOGFBiH report it is greater. The average number of comments in each entity varies depending on the type of plan and the number of entities covered by the catchment area of the plan. In Serbia, the number of complaints is largest for the plans that cover central zones and reconstruction zones. The situation is similar when it comes to areas of protection.

In most cases, complaints are considered by special municipal bodies (such as committees or the planning commission). In Kosovo, municipal committees for planning taking into consideration and replying to received complaints are composed of representatives of the local government, members of the local assembly and independent experts. In Serbia, all received complaints are considered by the planning commission composed of local government representatives and experts appointed at the national level. The office responsible for the preparation of the plan also considers the complaints and decides on them in line with the concept and professional standards.

The level of acceptance of citizens' complaints in Romania is reported to be under 1%, while for AAM, CALM, AKM, ZELS and ALVRS it falls between 1% and 10%. More than 10% of accepted complaints are reported by SOGFBiH, SOS, UoM, SCTM and NAMRB.

Citizens should be formally invited to give their proposals, comments and complaints, not only regarding the final draft plan but also throughout a number of phases, starting from

the analytical phase and definition of strategic goals, as this is a precondition for the planning process to be successful and efficient. At the same time, this causes a reduction of the number of complaints in the final phase of plan elaboration. Even when envisaged by law, and when there is good will on the part of authorities, citizens most often are not sufficiently educated on their legal rights and also responsibilities regarding the development policy of their towns, settlements and neighborhoods. The type of complaints and comments given by the citizens lead to the conclusion that the prevailing situation is one in which participation is not devoted to the public interest, and that citizens in this process are concerned primarily with satisfying their own individual interests. This is an issue of democratic culture, which has not been developed in most cases involving local issues. Local authorities do not work sufficiently to improve such situations, and they themselves often are not sufficiently educated, capable or interested in improving the quality of citizens' participation. On the other side, the participation is usually conceived and developed in such a way that discourages people to take part in it and people perceive all the decisions have been already made. In that respect it is equally an issue of developing the governance culture.

3.3.4 Local experts' perception of citizen participation

Despite the fact that in almost all entities citizen participation is legally stipulated, the practice is perceived differently, existing in three forms:

- 1) participation doesn't exist at all,
- 2) participation exists, but is only formal without making any real impact and
- 3) participation exists and can genuinely influence the plan

In some entities where the process is not stipulated in detail, the effect of participation is still seen as considerable (SOGFBiH, ZELS, UoM, ALVRS, SCTM and NAMRB). In other entities, where participation is developed in detail through guidelines (ACoR, CALM) the effect of citizens' involvement is, however, seen as negligible and the process as purely formal.

An important point raised in complaints is that, despite the existence of the good will of local authorities, there is a strong need to educate citizens in their rights and powers.

Although elaborated in regulations, most of the local experts hold the view that citizens' participation is present more at the normative than practical level. Most of the citizens do not feel a part of the decision-making process in their local communities, or adequately and informed in a timely manner on events and plans of the local authorities. Launching initiatives by which certain issues could be solved, and life in the community improved, is rather an exception than a rule. The rarity of consultations with the public, when proposals or decisions made by the authorities are discussed, has additionally moved citizens away from the decision-making process.

It was also stressed that there is a need to improve citizens' knowledge on urban planning and a need to give clear explanations as to why the plans include certain restrictions (environmental, social, economic). However, the general public, as with politicians, do not need technical knowledge on planning – this is the task of professionals. They simply need a) a channel for articulating their needs and priorities and b) evidence that if they participate, their contributions will be taken seriously enough to influence planning outcomes.

An important reason why the process has failed is the lack of confidence in local authorities, particularly when faced with unexpected and “non-profitable” planned decisions regarding their land parcels. Therefore, local authorities must first win the confidence of citizens and convince them that urban planning represents the public interest; the authorities must implement every planning phase based upon these realities.

Many experts have assessed the degree to which complaints are accepted as unsatisfactory. The most frequent reasons that complaints have been rejected are that these complaints were unsubstantiated and without foundation under the law. Qualitative improvements of the participation process, more active engagement of planners and LGs, as well as the education of citizens, could significantly influence the quality and degree to which citizens’ inputs are accepted. Also, the continuous monitoring by citizens, along with public announcements would have a positive impact upon the transparency of the entire process.

3.3.5 Conclusions and recommendations

Conclusions

In most legal systems, the participation is ensuring legal security of the citizens in the planning process. Formal participation stipulated by law, imposing the public procedure and need for consultations, requires a balance between the right of stakeholders and citizens to directly participate and the need for government to provide an efficient planning frame to consider the extent and diversity of interests. Professional competence, democratic legitimacy and general authenticity of the plan (its legitimacy for implementation) is accomplished by exhibiting the draft plan in public. This acquires trust and legal security for all stakeholders.

With the exception of UMM, all the LGAs under review have quite developed legal instruments of citizen involvement. In some, the procedures are worked out in more detail and are applied at many stages of the process. But there are a few examples where participation is introduced into the planning process only at the phase when the draft plan is already formulated (SCTM, ALVRS, ZELS). Public debates are one of the basic forms of citizens’ participation in most of the LGAs. But, it is not uncommon that public debates are used only to give legitimacy to decisions that have already been made, and are not intended to serve active cooperation and decision-making. The result is that citizens rarely participate in them.

Municipalities are not ready and often lack capacity to successfully take over the facilitation of the process. Successful implementation requires adequate knowledge about methods and the inclusion of a broad spectrum of professionals, and these are missing. The problem is also that experience and skills related to communication/collaborative planning are insufficient, further indicating that the education of all participants is key to the success of the process.

Insufficient information is a barrier to a more comprehensive participation of citizens in decision making related to the plan. In most cases, citizens have not been informed of the plans and intentions of local authorities in a timely and sufficient manner, particularly at the beginning of the planning process. Timely and continuous information on the

overall planning process and its significance, as well as providing citizens sufficient time to respond in order to protect or ensure the realization of their interests has been identified by only a few LGAs. The issue of rendering information inevitably raises the issue of evaluating the transparency of the entire process, and thus also of evaluating the level of confidence between the authorities and citizens.

Besides the formally stipulated procedures, participation can be successfully exercised through informal ways. Planning companies or civic NGOs sometimes support the planning process because additional information is needed or with the aim to defend common interests that can be endangered by the plan.

Although developed in regulations, citizens' participation is more present in norms than in practice. The reasons can be found on both sides. The public sector often sees participation as a burden and as a formality that slows down the process. On the citizens' side, there is not much concern for issues of the common interest (it is reported that complaints are always related to individual property interests). This suggests that there is not much belief in the real effects of participation. The citizens may question the good intentions of the authorities and the transparency of the process. Obviously, the common denominator in all these entities, besides a general mistrust towards the authorities, is that citizens are not sufficiently aware of their democratic powers. This practice might therefore be viewed as a litmus test of the democratization level of each particular country.

Citizens are most often insufficiently educated about their legal rights, as well as their responsibilities regarding the development policy of their towns, settlements and neighborhoods. The culture of citizens' participation in the activities of the general interest has not been developed. Local authorities do not work enough to improve this issue, and they themselves are often not sufficiently educated, interested or capable to improve the quality level of this process.

Recommendations

a) Introduce extended participation in the planning regulations and practice

It is recommended that citizens' participation be introduced in the planning regulations in those countries where it is presently lacking or inadequate. Advocating for its formal introduction could be the task for LGAs.

b) Regulate in detail citizens' participation by law and provide appropriate manuals

The procedures of stakeholders' and citizens' involvement should be developed in more detail, i.e. establish procedures and mechanisms of participatory decision-making in order to achieve consensus and more effective planning for each particular plan type and according to the phases of the planning process²⁴; The regulations should be supported with appropriate manuals and handbooks for participation.

24 According to the phases of the planning process (initiative phase, preparation, formulation of the plan, implementation and management/support), the adequate level of participation is determined. Each phase of the planning process involves the community in a way that provides the best recognition and realization of common interests. Even though participation is required from the very beginning of the planning process, it has been shown that it is most significant in the phase of the plan formulation (problem definition, formulation of goals and evaluation of alternatives) and it is implemented on the level of mutual decision-making and control.

c) Support informal ways of participation and information dissemination

Besides formal participation procedures, LGs should encourage and support informal participation and information dissemination (consultation and communication through electronic media and the internet, participation in opinion polls, citizens' initiative, submission of petitions and proposals of citizens, influence through interest groups or local representatives, local media or within citizens' associations; informal collective actions and neighbors' initiatives; advice by service users and other advisory bodies, use of internet as a forum for electronic debate, etc.).

d) Participation should be conducted by the skilled organizations

The role of municipalities in organizing and facilitating participation should be moved from the LG to skilled organizations – planning companies, NGO or private companies, while municipalities should extend their role for monitoring the process and evaluating the final product; Adequate resources must be additionally budgeted.

e) Educate planning professionals in participations skills

Facilitating participation includes raising capacities in the organization that carries it out. Adequate education should be established and provided to all professionals involved in the planning process. Given the fact that most planners are not sufficiently skilled to understand and manage the interaction between economic powers and institutional and political setup, nor the communicative/collaborative aspect of planning, there is a need for their continual education, even linked with individual licensing, where that kind of validation of profession status exists.

f) Educate citizens on their legal authority in the planning process

Besides educating professionals involved in the planning process, citizens should also be educated about their legal powers and responsibilities for the development of their cities and neighborhoods. LGs should make every effort to develop the culture and practice of public participation in local issues. This work should be done in partnership with civil and professional sectors.

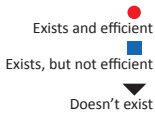
g) Inform citizens throughout the planning process

Municipalities should consider informing citizens about the most important issues that concern them from the earliest stages. They should maintain open communication, even during the stages when involvement of citizens is not legally foreseen. This will help build trust between the local government and the citizens.

h) Invite citizens to participate in all key stages of the planning process

Citizens should be formally invited to give suggestions, comments and complaints not only on the final draft of the plan, but in all stages, particularly in the initial phase when strategic objectives are defined. The quality of the plan should be measured by the level and effects of stakeholders' involvement and citizens' participation, through adequate controlling mechanisms and indicators, while LGs and professionals should increase the level of acceptance of citizens' input. Adequate monitoring and reporting instruments should be established.

Table 8. Overview of citizens' participation in legislation and practice and recommended improvement actions

	 Exists and efficient Exists, but not efficient Doesn't exist	Participati-on legally stipulated	Detailed guidelines exist	Informing citizens	Citizens influencing changes	Capacities for participation exist
SOGFBIH	●	■	●	■	■	
		b		h	e, f	
ALVRS	●	▼	■	●	■	
		b	c, g		e, f	
UORH	●	▼	●	■	■	
		b	c, g	h	e, f	
SOS	●	●	●	●	■	
					e, f	
ZELS	●	●	■	●	■	
			c, g		e, f	
UOM	●	■	●	●	■	
		b			e, f	
SCTM	●	▼	■	■	■	
		b	c, g	h	e, f	
AKM	●	●	■	■	▼	
			c, g	h	d, e, f	
ACOR	●	●	●	■	●	
				h		
NAMRB	●	▼	●	●	■	
		b			e, f	
CALM	●	●	●	■	■	
				h	e, f	
UMM	▼	▼	▼	▼	▼	
	a	b	c, g		d, e, f	
AAM	▼	▼	●	■	▼	
	a	b		h	d, e, f	

3.4 Content of General Urban Plans

Planning regulations as stated by the NALAS member LGAs under review have been constantly changed during the past 20 years, as they try to cope with severe development challenges – requests for economic growth and investment, housing shortages and at the same time, with a growing “disease” – informal construction. Urban planning is usually accused of being too slow and inflexible, not serving the needs and appetites of developers. Changes in planning regulations are consequently affecting changes in methodology, which we are interested in.

In this chapter we shall briefly assess certain elements of the methodology, namely the formal content of the selected plan type / the General urban plan and the extent to which this methodology is regulated by norms. In all entities, the selected plan type exists in a similar form except in Slovenia and Montenegro, where a new type of plan was recently introduced. This is the *Spatial-Urban Plan*, covering the entire territory of the LG unit, merging what in all other countries is divided, usually into a “spatial” plan, covering the whole territory, and an “urban plan”, defining the urbanized zone of the municipality (main town).

This chapter assesses some of the formal requirements of the planning procedures, respecting the content of the GUP. Several important substantive and technical issues were explored and comparatively analyzed, and some were additionally compared to some of the contemporary European regulations and practice.

3.4.1 Methodology and tools

In all the LGAs, the content of the plan is regulated by law or other regulations at the central level. The methodology is also regulated by national laws and defined more in detail in by-laws and manuals, except in Montenegro. In Bulgaria, the methodology is additionally developed at the local level, while in FBiH (Bosnia and Herzegovina) through federal and cantonal regulations. In Romania, guidelines on methodology are provided in the form of a manual. Sometimes, as in the case of Kosovo and Serbia, the law contradicts the by-laws adopted later and adjustments are needed. Besides the content of the plan, by-laws regulate urbanization standards, elaborating methodology, standards for presenting the plan and the way the plan is applied.

Specific analytical methods, such as SWOT, problems and potentials, and force field analysis are sometimes prescribed (SOGFBiH, AKM, ACoR, AAM), sometimes they are not mandatory but are used in practice (ALVRS, UoM, CALM, UMM) and in some LGAs, they are not used at all (UoRH, SCTM and ZELS). It is reported that very often outdated statistical data is used.

An important planning tool, the delimitation between built-up (urbanized) and non-built-up areas, is defined in almost all planning regulations. The special case where this border doesn't exist is in Montenegro. There, the newly introduced *Spatial-Urban Plan* doesn't recognize this border and the detailed plans of particular locations follow it directly. The problems of uncontrolled urban sprawl are in direct relation with delimitation of built-up areas.

Generally, there is no strict rule regarding the scale of a GUP; the scale varies, depending upon the size of territory (catchment area) covered by the plan. The small ones (up to

10km²) typically apply a scale of 1:2500, and often also 1:5000. In Serbia, Montenegro and Kosovo these plans may also apply a scale of 1:10000. Medium plans (up to 100km²) most often use a scale of 1:5000-1:10000, and less often 1:20000 (Serbia, Moldova). It is common practice (in the metropolitan areas of big cities) to apply a scale of 1:25000. For this size of territory, in the Republic of Srpska (Bosnia and Herzegovina), Macedonia and Bulgaria a scale of 1:10000 is applied, while in Serbia and Turkey these plans are made by applying a scale of 1:50000. The level at which the details are presented in the plan (scale level) may also be influenced by the plan's regulatory power, where the higher level of presentation of details may also imply that elements of the plan are more elaborated. Although contemporary plan presentation techniques offer significant opportunities in this regard, standardization has not been fully established.

Although legislation prescribes the general content and procedure under which the GUP is to be drawn up, it seems that the prescribed methodology and content are not always adapted to realistic possibilities and the needs of the city. Defining the urbanized zone is an important mission of GUP as a tool by which urban sprawl is controlled. The rationality of using this planning tool may be subject to reconsideration. The long-lasting practice of one-sided and non-harmonized management over construction land contributes to the obstruction of solutions in the plans, so there is an obvious lack of more efficient methods by which the plan will be realized.

3.4.2 Strategic planning elements in regulation and practice

The GUP, even if not explicitly stipulated by law, is generally considered to be the spatial development strategy of the city, with the exception of Moldova and Turkey. Regardless of its strategic component, the planning process is rarely performed within the structure of a strategic plan, but may have some strategic planning elements. Usually this is the space where informal procedures (strategic and action planning) are introduced to the formal process in order to get better inputs.

The elements of the strategic planning structure that were examined included the formulation of a vision and priority objectives, while the other issues of concern were the dependence between the plan objectives and proposals with development concepts and the availability of resources to implement the plan.

It is prescribed that the plan must contain a formulation of the vision and goals of the plan in the majority of analyzed entities, except in Macedonia, Moldova and Turkey, where these are not mandatory but do exist as part of the planning practice. Priority objectives also have to be defined everywhere, except in Croatia and Serbia, where this is not regulated in practice either. Mandatory participation and a broad consensus of all relevant stakeholders in defining the elements of the plan, which were characteristic for the methodology of strategic planning, are often lacking in the procedures under which the GUP is drawn up, which is considered in detail in Chapter 3.3.

The defined development concept precedes the plan under which land will be used everywhere, except in Romania. This has not been prescribed as mandatory, except in Slovenia, but it is a common part of planning practice in Montenegro, Moldova and Turkey. The concept rarely includes an offer of a variety of solutions, as an opportunity to open discus-

sion about the selection of the most acceptable solutions. In Serbia, the planning concept also establishes the final catchment area, as well as the areas for which an elaboration of detailed plans has been envisaged.

An important aspect indicating the probability of the plan's implementation is the extent the plan is based on a realistic forecast of the potential resources needed for its implementation. In the majority of the LGAs this is the case and in some of them it is even regulated (Bosnia and Herzegovina and Bulgaria) while in Kosovo, Turkey and Albania the plans lack this dimension. In Kosovo it was stated that in practice plans often tend to overestimate these potential resources (particularly the financial ones), and the consequence is often an unrealistic planning result and conflict during implementation. Certain experts consider a flexible planning framework to be the key to the realization of goals set by the plan (Montenegro).

The GUP has a crucial role in all planning systems. Its primary task is to guide the strategic development of the city. However, the treatment in practice of the elaboration and implementation phases does not include the entire process of strategic planning, and the planned goals are not always harmonized and coordinated with other local strategies, and they are rarely achieved. The GUP as such is less a tool, but rather the final goal, and does not enable best decision making for the efficient management of the city's development. Improvement of this technology represents a priority task.

3.4.3 Environmental issues

Beginning in 1992, the Rio Declaration on Environment and Development introduced the environmental aspect as an inseparable item of sustainable development at the level of the UN, raising higher awareness in the EU with the Aarhus Convention of 1998. The Aarhus Convention developed procedural issues of practicing democracy through accessing information and justice, as well as the participation of the public in environmental matters. The environmental aspects of planning have finally been internationally regulated at the level of the EU through the Directive on Strategic Environmental Assessment (SEA) in 2001 and the legislative regulation that defines operational practice of the Aarhus Convention, brought by EU parliament in 2006.

The SEA Directive also became very relevant for the candidate countries for EU membership. The study confirmed that all 13 countries have laws foreseeing the environmental analysis as part of the analytical phase of the planning process (except in Moldova, where it is done in practice, but is not mandatory). It is also relevant for the environmental impact assessment of the plan (EIA). In Turkey, the EIA is done specifically in cases where a large area is to be decided for urban land use (industry, large housing settlements, marinas and similar cases). The EIA report is first approved by the line ministry in charge of the environment, prior to deciding new land use.

As stated by some LGAs, all national regulations related to the environment are concentrated in one law, usually named the Environmental (Protection) Law, while in some, the regulatory framework on environment issues is very much developed, such as in Serbia, which has the Environmental Protection Law, the Strategic Environmental Impact Law, the Integrated Environmental Pollution Law, and the Environmental Impact Assessment Law.

These laws are directly related to planning, but sometimes may be in mutual conflict. A similar regulatory framework exists in FBiH (Bosnia and Herzegovina), Macedonia and Bulgaria. Laws in all the entities foresee the Strategic Environmental Assessment (SEA) as a mandatory element of the plan.

Regardless of the wide range of legislation for environmental protection, it is reported that the environmental issues for the majority of LGAs is not adequately treated in plans. The reason for this (in Serbia, for instance) is that there is a lack of substantial connection between the planning law and environmental protection laws. The SEA procedure is conducted more as a formal step and often does not involve the assessment of alternative solutions. SEA is enclosed as a part of the final draft of the plan. In Serbia, it is common that local governments decide not to even prepare the SEA due to lack of funds, thus ignoring one of the essential conditions and instruments for responsible planning. In Kosovo, this part of the plan is considered superficial, since there is no available data on the status of the environment.

3.4.4 Regulatory powers of the plan

This Chapter analyzes issues related to the practical implementation of the plan. It seems that in this area the many differences in the norms are even more apparent than in the practice of planning.

Any urban plan of a city includes the purpose of the areas or the way in which the land will be used as the major, if not always the basic element of zoning. A few basic urban functions (housing, work, recreation, traffic, central activities) are by nature constant in terms of structure, with different ways of organization and realization. The regulations define and describe the types of structures and types of land use (housing, commercial, mixed purpose, industrial and other type of land) in all entities except in Serbia.

Urban indicators defining the allowed volume of construction (index of occupancy, index of construction, height, etc.) are set forth everywhere except in FBiH (Bosnia and Herzegovina), Macedonia, Montenegro and Serbia, where these parameters for individual locations and land parcels are defined by plans at a lower (more detailed) planning level, according to guidelines contained in the GUP. In Serbia, legislation in force has defined only the terms for these urban parameters, but no adequate by-laws have been adopted to define parameters for special purposes.

GUPs defines/sets forth rules on construction, regulatory and construction lines, types of structures in most cases, except in FBiH (Bosnia and Herzegovina) and Macedonia. In Macedonia, the GUP defines only the regulatory lines of the primary traffic network and areas for public use which are of significance for the cities, whilst the regulatory lines, construction lines and types of structures are dealt with by the detailed plan. In Serbia, the use of different housing typologies and conditions for their construction are usually defined, but only in writing.

In somewhat more than half of the analyzed entities, the law has prescribed the possibility to implement measures in the form of urban orders contained in the plan (any type of orders related to development and revitalization, destruction, reconstruction, maintenance, or greening the city). They are not envisaged by law in Bosnia and Herzegovina, Serbia,

Romania and Moldova. In Montenegro, measures for destruction and expropriation are envisaged, whilst in Serbia are only measures related to destruction are envisaged. In Turkey, each detailed measure has been described in the plan's text. In Macedonia, a GUP is in practical terms the law on development and organization of space – the city.

The lack of stated urban norms, indicators and measures has critically influenced the reduced regulatory power of the GUP and insufficient efficiency regarding the implementation of the plan, even when the plan represents the basis for issuing building permits. Inadequate definition of these parameters opens room also for possible voluntary interpretations of the plan.

3.4.5 Conclusions and recommendations

Conclusions

A GUP has an outstanding position within planning systems. Significant changes in contemporary development place it as the focus of the planning profession. It is expected that a GUP should unite different developmental requests, transpose guidelines contained in plans at a higher hierarchical level, and serve as an efficient instrument for the realization of the plan. Simultaneously, these complex requests open the issue of reexamining its adequate content and methodology, as well as the measure of its effectiveness in directing the spatial development of the city.

Not all entities have the GUP, as there is also a new form of the basic local plan, which is the *Spatial Urban Plan*, which treats the entire territory of the local self-government together with its urban part, in a single act.

The content and methodology of a GUP are quite developed through planning regulations and practice in all LGAs. Certain specific methodologies and tools (SWOT, problems, restrictions etc.) have not always been prescribed, but have often been part of a positive planning practice. The lack of their more detailed and more precise elaborations has been identified in regard to sensitive and realistic capacities of local self-governments, which may seriously diminish the effectiveness of its implementation.

The issue of expanding the borders of a city has been significantly stressed and relates to the long-term policy of development. The fact that urban sprawl occurs in many LGAs due to uncontrolled urbanization has inevitably triggered requests to control the expansion of cities. An important planning tool, the demarcation of constructed and unconstructed areas has almost everywhere been set forth as a mandatory element of the plan's content. However, if a city's population is growing, it is likely that physical expansion of the urban area is needed to prevent property price inflation. The rationality implementing this tool when it comes to defining the borders of urbanized zones may often be subject to reexamination.

A GUP has been considered a strategy of the spatial development of the city. Regardless of its strategic character, it is rarely fully realized in the structure of the strategic plan. Estimated strategic planning elements in the process of urban planning (vision, priority goals, etc.) have been either formally prescribed or implemented in practice as common informal methods. It seems that this field has been better elaborated through handbooks, practically everywhere.

The environmental issues are strongly addressed, in general following the EU SEA Directive of 2001. However, there is a wide variety in regulations regarding the types of requested studies and level of elaboration. The real value of these studies, despite being a mandatory part of plans, may need to be questioned.

The regulatory power of a GUP has been the most important segment of its practical implementation. The type, character and status of constructed zones, urban parameters for the development of the land, the type and typology of planned structures have not always been part of the construction norms envisaged by the plan. Even when they do have regulatory powers, plans have not always included certain urban orders related to development and revitalization, destruction, reconstruction, maintenance, greening, etc. Inadequate definition of these parameters has critically influenced reduced efficiency in the implementation of the plan.

Recommendations

a) Develop GUP content and methodology in detail

The content and methodology of the plan should be developed in detail by adequate ordinances and manuals; This is especially important when the planning law changes and when procedures must be elaborated and tested for viability with practitioners before they are decided;

b) Establish standardization in production of plans

Adequate by-laws should establish standardization in producing plans in order to ease the work of planners and specialized departments responsible for planning and spatial development

c) Include contemporary methods, tools and technical systems in the planning process

Contemporary methods and tools, including strategic planning procedures, specific analytical methods, technical systems such as GIS, should not necessarily be regulated as mandatory, but rather be part of the prescribed guidelines for the planning process. The planners and LG officials involved in the process should be acquainted with the meanings and principles of these methods, rather than merely apply them to fulfill requirements. Therefore, besides the need for additional elaboration of these procedures and techniques, it is necessary to provide adequate training for professionals and LG officials.

d) Harmonize planning and environmental laws

It is necessary to harmonize the laws on urban planning and the law which regulates SEA and therefore to provide their essential interconnection and assure they are complementary. The Report on SEA has to be adequately implemented in the planning document. It is also important to set monitoring instruments and obligations of periodic reporting on the impact of the plan on the environmental aspects during implementation of the plan.


















































































e) Develop the form and methodology for the environmental impact assessment and train experts

It is important to develop in detail the form and methodology of SEAs through adequate ordinances. Being still new practice in many entities, it is necessary to provide adequate training of professionals, both in LGs and in planning companies, primarily to understand the essence and quality of EIA.

f) Improve the regulatory function of GUP

It is necessary to legally improve the regulatory role of the GUP through introducing the mandatory list of contents with stipulations concerning urban infrastructure and building construction, especially in protected areas and in areas of special interest, where these can take the form of a commandment, thus providing a much higher degree of power in the plan's execution.

Table 9. Elements of the methodology and content of the plan

	 Exists and efficient  Exists, but not efficient  Doesn't exist	Content and methodology of GUP regulated in detail	Strategic planning is part of the planning process	Environmental issues included in the planning process by law	Regulations prescribe planning standards	Regulatory powers of the plan	Urban commandments are part of the plan
SOGFBIH							
	a, b		c	d, e	f	f	f
ALVRS							
	a, b		c	d, e		f	f
UORH							
	a, b		c	d, e			f
SOS							
	a, b		c				
ZELS							
	b		c	d, e		f	
UOM							
	a, b		c	d, e	f		
SCTM							
	a, b		c	d, e	f	f	f
AKM							
	a, b		c	d, e			f
ACOR							
	b		c	d, e		f	f
NAMRB							
	b		c	d, e			
CALM							
	a, b		c	d, e		f	f
UMM							
	a, b		c	d, e			
AAM							
	a, b		c	d, e			

3.5 Land management issues relevant to town planning

Land management tools are crucial for efficient local management and sustainable local development. The existence of a legal framework and developed procedures enables local authorities to use its major unrecoverable resource – the land, in the most effective way. Urban planning provides local governments with optimal strategic solutions, but the implementation depends mostly on their ability to develop land parameters. Both for private and public development, land management tools should provide solutions for implementation of any controlled intervention in space. Protection of a special zone, ensuring construction of important infrastructure, enabling feasible housing development or even preventing land speculations are necessary powers of responsible local governance. These legal tools should provide a balance between common interests and human rights. Planners should be fully aware of these regulations to know to what extent their proposals will be feasible. And that is often the missing link between the plan and the probability of its implementation. Failure in implementation can affect the trust of both the local leadership and the general public in planning and endangers the reputation of the town planning profession.

In this chapter, the land management issue has been explored by analyzing the major elements of planning (zoning, regulations on planning and development, construction rules) and some administrative elements of land policy (nationalization and expropriation of land rights, protection of natural and cultural values, land development and parceling). This chapter is devoted to several specific subjects related to immediate land-use opportunities, taking into account the previously mentioned elements of planning.

3.5.1 Safeguarding the land (land protection)

This means legal measures of preventing or limitation development on specific territories. It can be durable or temporary. All thirteen territories under review have the legal means to prevent or limit development through their plans. In Croatia and Kosovo land protection measures are applicable to areas of special interest. In Slovenia, city councils adopt an ordinance for a particular area of interest, which is enacted for a five-year period, after which it is automatically abolished and cannot be re-enacted for a specific period of time. The majority, except in Croatia, Macedonia, Serbia and Kosovo, have a legal possibility to temporarily postpone building applications, while some dependant development phases are ongoing, or some other preconditions have to be met.

These safeguard measures can apply to zoning (lot size, shape, construction rules, etc.), protection of cultural and natural values, or protection against possible accidents. However, land markets established in the areas reviewed tend to resist safeguard measures, which affects land supply elasticity, especially in edge areas of the city where these measures are not always effective.

3.5.2 Land acquisition and valuation

Legal and, certainly, the financial means for acquiring land for the development of a common interest or with the prospect of alleviating the construction land supply and land prices exist

everywhere, but these instruments are generally seen as complex and costly to implement and are often bound to a higher level authorities' decisions. Here, we should reiterate the fact that not everywhere do municipalities have the capacity to own land, but rather they have a right of use, given by the State, who is the formal owner. This situation stated by SCTM, UoM and AAM and is in the decentralization process. Another issue relates to the restitution of the nationalized private property that is still not legally regulated in Serbia and Kosovo.

The analyzed options of local governments to acquire land are:

- Right of pre-emption,
- Expropriation,
- Purchase,
- Compensation.

The legal right giving the local authority priority in purchasing privately owned land exists in half of the LGAs under review, i.e. SOGFBiH, ALVRS, UoRH, ZELS, SOS and NAMRB. ACoR states the legislation grants the pre-emptive right to local authorities only for acquisition of historical monuments. In the case of historical monuments this right also applies to land. As stated by ZELS, local government is entitled to the pre-emptive right only if it has an undivided interest in the land, pursuant to the law on obligations. In Slovenia, local government determines an area of pre-emptive right by issuing an ordinance.

Rules and procedures applicable to expropriation exist everywhere and are usually subject to definition of public interest at the central level.

In cases where the municipality needs to acquire land for future development (private or public), not of a higher common interest, it can do so through direct purchase or by compensating the private owner with other municipal land of similar value. Both options exist in the majority of LGAs, while in the findings of AAM, such legal provisions don't exist. For UMM, only compensation exists as the solution. The conditions under which the local authority has the right to purchase are even more relevant than the legal possibility.

The key issue is whether a municipality can purchase the land before its purpose is defined and afterwards, produce an urban plan in which its purpose will be defined with all development parameters projecting the land's future value. The difference in price before the land purpose is defined and after is obvious.

Valuation of land for all the land transactions (expropriation, purchase, compensation and reallocation) stands as an important issue and, beyond the question of legal regulations, it functions in the open market and its transparency may be questioned. Most common means for assessing the value of land are:

- Standard procedures used by tax departments,
- Standard procedures used by cadastre offices,
- Experts' committees for land valuation,
- Certified real estate companies,
- Individual certified assessors.

Despite the fact that tax departments have standardized instruments for valuating real estate property for taxation purposes, only in Albania and in some cases in Bulgaria and FBiH (Bosnia and Herzegovina) are the values estimated adequate to free market values. Similarly, in Montenegro the state cadastre office is in charge for land valuation.

The most common way of evaluating the land's market price is through specially established, permanent or ad hoc experts' committees, as in Turkey, Serbia, Romania and Kosovo.

Valuation done by certified court experts or specialized and authorized real estate company is found in Moldova, Slovenia and sometimes in Macedonia and Serbia. In Macedonia an expert certified by the court is invited only if the municipality fails in agreeing on the price. In Croatia, it is reported that the land price is always overestimated, which may be in direct relation to whether the land is being acquired before or after the plan has defined its purpose.

Land valuation instruments should comprise a complex and developed mechanism, backed up by laws and local regulations and conducted in a publicly transparent procedure.

3.5.3 Land reallocation

Land reallocation enables the redefinition and adjustment of cadastral boundaries according to the urban regulatory plans. Under new development conditions, land reallocation takes the form of complex development. This land management tool can facilitate new construction and significantly impact urban renewal and revitalization of Brownfield investments. This complex issue is an open transparent and regulated negotiation process between the local authority and private land owners. City development depends very much on its efficiency.

In Albania, reallocation is not legally foreseen. In all other entities, it exists in the law, but is not seen as functional in practice, primarily due to time-consuming procedures, lack of experience and insufficiently developed regulations. The two basic tools - reallocation of property rights (compensation) and adjustment of plot boundaries are present in all observed LGAs.

3.5.4. GIS as land management and planning tool

Under conditions of rapid and often unpredictable changes in the market, with diversified rights and interests of stakeholders, fast and efficient urban decision-making has become a major challenge. Besides the need for methodological adjustment, flexible and adaptable planning and change management requires the use of modern tools and systems for effective tracking, monitoring and analyses. Geographic Information System (GIS) development enables local authorities to make decisions based on real spatial information and helps predict future trends. At the same time, GIS facilitates investment development management, formalization and regularization of informal settlements, improvement of land conflict resolution, land use growth, etc. Networking of planning institutions with other organizations and institutions holding different types of spatial information (especially information about land rights, obligations and restrictions) is crucial for sustainable planning solutions, effective application of land policy instruments and efficient management of spatial development.

Spatial information systems (GIS) are widely accepted as a necessary tool to support planning. However, while being commonly used, GIS is not regulated in all entities, usually because the regulations refer to other sectors that may have a leading role in developing and coordinating GIS (cadastre).

In Bosnia and Herzegovina, Montenegro, Romania, Moldova and Albania, GIS is introduced in regulations, while in Bulgaria and Turkey use of GIS is a common practice. In Croatia, Macedonia, Serbia and Kosovo it is used in a basic and occasional way, but only in the bigger municipalities. It is reported that local governments often lack adequate technical and administrative capacity for adequate development of GIS and efficient management of spatial development.

In spite of growing awareness about the importance of GIS among planners, it is not sufficiently and properly used in practice. The greatest obstacles to increased use of GIS are found in the standard outdated methods that have been applied for development, implementation and monitoring of planning documents. Insufficient cooperation and information sharing among different institutions and lack of standards during the GIS implementation phase, directly affect the efficiency of all segments of spatial planning.

3.5.5 Conclusions and recommendations

Conclusions

Land policy does not respond quickly enough to social and economic change in the region. Expectations from land management mechanisms are linked to new development opportunities and to the provision of balance between private rights and the public interest.

Legal measures for land protection, if properly directed, can significantly affect urban development management. Sensitive urban development issues are particularly important from the aspect of durable values and non-renewable resources, and the protection of undeveloped areas on the outskirts of cities.

Instruments of land acquisition are generally not efficient for local development and often depend on decisions by higher-level authorities. In the cities, with issues of unregulated land, property ownership (restitution / denationalization), development opportunities are reduced for both the public and private sectors. Sometimes these issues are in conflict with other elements of urban development. In some cases, the requirements for land acquisition (before or after the development of a land-use plan) are more important than the legal possibility for land acquisition, due to substantial differences in prices. Valuation of land has been institutionalized, but the final price is determined by mutual agreement. Some land valuation options are inappropriate and ineffective, while others lack transparency.

Land transactions (expropriation, purchase, compensation and relocation) are important for urban development. Land transactions take place in the open market and can be examined by the public. Expropriation of land for development purposes is usually carried out only if public interest is involved. Land for construction of buildings of public interest is determined by the land-use plan.

The issue of land reallocation is regulated, but no significant results have been achieved in practice. Reallocation and adjustment of cadastral boundaries is a complex issue which

enables local governments to properly harmonize public and private interests, and ownership rights with development objectives. In principle, present instruments for the reallocation of urban construction land are not effective. Improved regulations and more practice are needed.

Geographic Information System (GIS) is widely accepted as a planning tool for land use and efficient land management, but is still generally under-developed. Legal regulations lack provisions on GIS methodology and standards. In the rare cases where GIS is in place, this concept is used partially and in its most basic form. The level of cooperation and geospatial data sharing between different institutions and systems is in most cases unsatisfactory. The problem with GIS application is related to the lack of knowledge of planners and agencies responsible for the implementation of spatial plans.

Recommendations

a) Improve the effectiveness of land protection legislation

Develop guidelines for effective implementation of land protection regulations and build a best practice through: informing the public about the implications of unauthorized use of land, consistent implementation of regulations by local authorities and monitoring.

b) Introduce the legal possibility to acquire land before it is planned for development

Adopt appropriate regulations which enable the acquisition of land before it is planned for development. This will enable local authorities to acquire land at lower prices and finance future development in a more effective way. Also consider the possibility of establishing a “land bank” for public and private development purposes²⁵. A wide range of opportunities for land acquisition should be accessible to local authorities. Cities need to create their own reserves of land for development, enabling them to protect the public interest and reduce land speculation.

c) Legally improve the methodology for land valuation and develop appropriate guidelines

Enable standardization of land evaluation methodology by adopting appropriate regulations and develop guidelines for its implementation. Instruments for land evaluation should be part of a complex mechanism supported by laws and regulations, and implemented through a public and transparent process. The developed methodology should be efficient and transparent.

d) Introduce the legal right of pre-emption and compensation in land acquisition to the local authority

e) Improve the legal framework and develop guidelines for land reallocation
























































Upgrade legislation and develop detailed methodology for implementing the instruments for urban land reallocation with standard tools.

²⁵ Land banks have a very mixed reputation. In countries where external oversight is lacking or where governance is not fully transparent, it has led to corruption and inefficiency in the development of land. It also often means that rural landowners are forced to sell at existing rather than potential land uses, so they are tempted to pre-empt this by selling to informal developers. A more balanced allocation of costs and benefits is needed.

f) Improve the methodology and practice of using GIS for the preparation and implementation of local plans

Stipulate mandatory use of GIS as a standard planning tool by law and upgrade the knowledge and practice of urban planners and technical services in this area. For the purpose of standardization, adopt relevant regulations and guidelines in order to define the content and method of using spatial data for the development and implementation of urban plans.

Table 10. Some instruments and tools of land management directly affecting planning and implementation of plans

	 Exists and efficient  Exists, but not efficient  Doesn't exist	Safeguarding the land	Land acquisition	Land reallocation	GIS development in regulations and practice
SOGFBIH					
	a	b, c	e		
ALVRS					
	a	b, c	e		
UORH					
	a	b, c	e	f	
SOS					
ZELS					
	a	b, c, d	e	f	
UOM					
		b, d	e		
SCTM					
	a	b, c, d	e	f	
AKM					
	a	b, c, d	e	f	
ACOR					
		b, d	e		
NAMRB					
		b	e	f	
CALM					
		b, d	e		
UMM					
	a	b, d		f	
AAM					
	a	b, c, d	e		

KEY ISSUES	Role, authorities and involvement of local authorities and relations between planning and local policies						Flexibility and efficiency of planning procedure and effectiveness of plans					
	Municipalities own the land and have autonomy in its disposal	Municipalities have authority to issue and approve GUP	Local elected officials are substantively involved in the process	The plans are interlinked with local policies	Cooperation with local and national institutions	Efficiency of plan production and quality of plans	Business sector influences plans without jeopardizing public interest	Legal instruments to initiate changes exist	Changing and interpreting plans transparent	Duration of the GUP planning process	Duration of small changes of the plan	GUP has execution capacities
	● Exists and efficient ■ Exists, but not efficient ▼ Doesn't exist											
SOGFBIH	●	■	■	■	■	■	▼	●	■	●	■	▼
	b	c	d	e	f	g	a, b, c, d		d	e, c	e, c	f, g
ALVRS	●	■	■	■	■	■	▼	●	▼	●	●	●
	b	c	d	e	f	g	a, b, c, d		d	e, c	e, c	
UORH	●	■	●	■	■	■	▼	●	▼	●	■	●
	b	c		e	f	g	a, b, c, d		d	e, c	e, c	
SOS	●	■	■	■	■	■	▼	●	▼	■	●	●
		c	d	e	f	g	a, c, d		d	e, c	e, c	
ZELS	●	●	●	■	■	■	■	●	■	■	●	▼
	b			e	f	g	a, b, c, d		d	e, c	e, c	f, g
UOM	■	■	●	■	■	■	▼	■	■	●	■	■
	a, b	c		e	f	g	a, b, c, d	a, d	d	e, c	e, c	f, g
SCTM	■	●	■	■	■	■	▼	●	▼	●	■	▼
	a, b		d	e	f	g	a, b, c, d		d	e, c	e, c	f, g
AKM	●	●	■	■	■	■	▼	■	▼	●	●	▼
	a, b		d	e	f	g	a, c, d	a, d	d	e, c	e, c	f, g
ACOR	●	●	■	■	■	■	▼	●	▼	■	■	●
	b		d	e	f	g	a, b, c, d		d	c	c	
NAMRB	●	●	●	■	■	■	▼	●	▼	●	■	●
	b			e	f	g	a, b, c, d		d	e, c	c	
CALM	●	●	■	■	■	■	■	●	●	■	■	●
	b		d	e	f	g	a, b, c, d			e, c		c
UMM	●	●	■	■	■	■	■	●	▼	■	■	■
	b		d	e	f	g	a, b, c, d		d	c	c	f, g
AAM	▼	▼	●	■	■	■	▼	■	▼	●	■	▼
	a, b	c		e	f	g	a, b, c, d	a, d	d	e, c	c	f, g
RECOMMENDATIONS	<ul style="list-style-type: none"> a. Vest on local governments the right to own and dispose of land b. Establish internal control mechanisms for changing the use of land owned by local governments c. Give local governments full authority for the preparation, adoption and implementation of local plans d. Improve and regulate the practice of the joint work of professional planners and local stakeholders e. The strategic aspect of local plans should be improved by establishing stronger links with local policies f. Establish cooperation between the planning institutions and public institutions at the central and local levels 						<ul style="list-style-type: none"> a. Improve legal framework to become sensitive to development opportunities b. Institutionalize collaboration between authorities, planners and interested investors c. Develop efficient mechanisms for protecting the public interest d. Increase the transparency of the planning process e. Raise efficiency in the production of plans f. Ensure higher flexibility of plans g. Define mandatory regulatory elements of the plan and mechanisms for their implementation 					

Overview of citizens' participation in legislation and practice and recommended improvement actions					Elements of the methodology and content of the plan							Some instruments and tools of land management directly affecting planning and implementation of plans			
Participati-on legally stipulated	Detailed guidelines exist	Informing citizens	Citizens influencing changes	Capacities for participation exist	Content and methodology of GUP regulated in detail	Strategic planning is part of the planning process	Environmental issues included in the planning process by law	Regulations prescribe planning standards	Regulatory powers of the plan	Urban commandments are part of the plan	Safeguarding the land	Land acquisition	Land reallocation	GIS development in regulations and practice	
●	■	●	■	■	■	■	●	■	▼	▼	■	●	■	●	
	b		h	e, f	a, b	c	d, e	f	f	f	a	b, c	e		
●	▼	■	●	■	■	■	●	●	■	▼	■	●	■	●	
	b	c, g		e, f	a, b	c	d, e		f	f	a	b, c	e		
●	▼	●	■	■	■	■	●	●	●	▼	■	■	■	▼	
●	b	c, g	h	e, f	a, b	c	d, e			f	a	b, c	e	f	
●	●	●	●	■	a, b	c	●	●	●	●	●	●	●	●	
●	●	■	●	■	●	■	●	●	■	●	■	●	■	■	
●		c, g		e, f	b	c	d, e		f		a	b, c, d	e	f	
●	■	●	●	■	●	■	●	■	●	●	●	■	■	●	
●	b			e, f	a, b	c	d, e	f				b, d	e		
●	▼	■	■	■	●	■	●	■	■	▼	■	■	■	■	
●	b	c, g	h	e, f	a, b	c	d, e	f	f	f	a	b, c, d	e	f	
●	●	■	■	▼	■	●	●	●	●	▼	■	■	■	▼	
●		c, g	h	d, e, f	a, b	c	d, e			f	a	b, c, d	e	f	
●	●	●	■	●	●	●	●	●	■	▼	●	■	■	●	
●	▼	●	●	■	b	c	d, e		f	f	●	●	e	■	
●	b			e, f	b	c	d, e					b	e	f	
●	●	●	■	■	■	■	●	●	■	▼	●	■	■	●	
●			h	e, f	a, b	c	d, e		f	f		b, d	e		
▼	▼	▼	▼	▼	■	■	●	●	●	●	■	●	●	■	
a	b	c, g		d, e, f	a, b	c	d, e				a	b, d		f	
▼	▼	●	■	▼	■	●	●	●	●	●	■	■	▼	●	
a	b		h	d, e, f	a, b	c	d, e				a	b, c, d	e		

a. Introduce extended participation in the planning regulations and practice

b. Regulate in detail citizens' participation by law and provide appropriate manuals

c. Support informal ways of participation and information dissemination

d. Participation should be done by the skilled organizations

e. Educate planning professionals in participations skills

f. Educate citizens about their legal authority in the planning process

g. Inform citizens throughout the planning process

h. Invite citizens to participate in all key stages of the planning process

a. Develop GUP content and methodology in detail

b. Establish standardization in production of plans

c. Include contemporary methods, tools and technical systems in the planning process

d. Harmonize planning and environmental laws

e. Develop form and methodology for the environmental impact assessment and train experts

f. Improve regulatory function of GUP

a. Improve the effectiveness of land protection legislation

b. Introduce the legal possibility to acquire land before it is planned for development

c. Legally improve methodology for land valuation and develop appropriate guidelines

d. Introduce the legal right of pre-emption and compensation in land acquisition to the local authority

e. Improve the legal framework and develop guidelines for land reallocation

f. Improve the methodology and practice of using GIS for preparation and implementation of local plans

4. Informal construction, informal settlements and legalization

4.1 Background

The undersigned National and Regional Representatives from South Eastern Europe recognize that:

I. The objective of this declaration is to commonly agree on actions that (a) will regularize (legalize) and improve informal settlements in a sustainable way and (b) will prevent future illegal settlements.

II. Informal settlements are human settlements, which for a variety of reasons do not meet requirements for legal recognition (and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations), exist in their respective countries and hamper economic development. While there is significant regional diversity in terms of their manifestation, these settlements are mainly characterized by informal or insecure land tenure, inadequate access to basic services, both social and physical infrastructure and housing finance.

III. Every person in the city or community has the right to be an equal member of the community.

Legalization/regularization of informal dwellers will make them individuals with equal rights. As such, inhabitants of the city should enjoy the same opportunities to realise his/her access rights to an adequate standard of living and access to services as everyone else in the city, as well as the same obligations to respect the law and pay taxes and user charges.

Vienna Declaration on National and Regional Policy and Programmes regarding Informal Settlements in South Eastern Europe of 28 September 2004, signed by the line ministers of Macedonia, Albania, Montenegro and Serbia, and afterwards by Bosnia and Herzegovina and UNMIK Kosovo

The existence of informal construction and informal settlements and the need for their legalization is a recognized fact and an important task for all NALAS member LGAs, except, in part, for SOS and CALM. This phenomenon is reported as less present by UoRH, ACoR and NAMRB, which will be explained in more detail in chapter 4.2.

According to the results obtained through this study, the intensity of efforts and the application of different integration models has not led to sustainable solutions for informal settlements. In order to put legalization into practice, appropriate legal pre-conditions have to be met, which are analyzed in this chapter in addition to according proposals.

The common approach to informal construction has been mainly focused on solving its consequences by imposing, (although not enforcing) restrictive measures for removal of illegal buildings (contrary to the Vienna Declaration) and sporadic attempts to integrate them into the formal (legal) system. The analysis, as well as the solution for legalization and integration of informal construction requires, however, a comprehensive, multidisciplinary approach.

The regularization of informal settlements and the legalization of illegal buildings is a common task for the majority of LGAs and systems under study. Current experience indicates that legalization is a time consuming process that should have multiple parallel goals: legalization, urban regularization and full physical, economic and social integration of informal settlements and their residents into the existing urban tissue.

Of course, not all informal settlements may be possible to legalize either because they are in a strategic location (eg on a main road, infrastructure corridor, or riverbank, vulnerable to flooding or land slide).

It will be equally important to stop and prevent future expansion of informal settlements and buildings, which is an objective laid down in the Vienna Declaration and other relevant documents. This objective will be best achieved through an adequate land policy and revision of complex planning and construction regulations, standards and administrative procedures.

Informal development is a consequential process of the historical and social-economic conditions in the European regions under study, and not only a legal, planning or administrative error. The major causes of informal development in three groups of regions in Southeast Europe have led to this adverse phenomenon, with far-reaching social, spatial, economic and political consequences, whose solution is still insufficiently successful:

- 1) The first and fundamental cause is the belated but strong process of urbanization** in the second half of the 20th century, which these societies were not able to successfully cope with (Slovenia is the only exception). In the major cities in SEE this process has remained uncontrolled, the result of which are informal suburban settlements.
- 2) Post-socialist transformation of the socioeconomic system** in the former socialist countries (this includes all except Turkey), which has taken place since 1989 in these regions. Since then, many entities, and most drastically, Albania, have faced uncontrolled urbanization and growth on the peripheries of cities, but also an increase of individual informal buildings and settlements within the city area and economically prosperous locations.

3) Emergence of civil wars (1991-1999) in the former Yugoslavia, which led to the influx of a large number of refugees and migrants to major cities of the Western Balkans, primarily in Serbia and in Bosnia and Herzegovina. This contributed to the variety and quantity of informal development.

The governments were not able to cope with the problem and it is evidenced that the problem was administratively neglected. In post-socialist countries, there was also a large legal vacuum after transition started. The new regulations were inadequate and non-implementable.

Extensive informal construction in large peripheral zones and corridors has resulted in ineffective and unplanned expansion of zones around the fringes of the city, usurpation of agricultural and public land and huge problems with the development of adequate social, road and utility infrastructure, as well as with the maintenance and rehabilitation of environment.

Informal settlements are reported present by all LGAs, except for SOS, where informal construction happens rarely within the planned zones. CALM and ACoR state that, uncontrolled urbanization is considered insignificant. According to ALVRS, SOGFBiH, SCTM and ACoR, informal settlements started to develop before the 1960s. AS of ZELS, UoM, AKM and UMM the process started between 1960 and 1990. For UoRH, and AAM, and at a smaller scale for NAMRB and CALM this phenomenon exploded after the collapse of the socialist regime and the beginning of democratization.



Figure 6. Turkey: Istanbul, Ayazma Informal Settlement

4.2 Situation analysis

In order to understand the extent of unplanned urbanization, participation of informal settlements in the total city area has been examined. We have analyzed the ratio of areas of informal settlements against the total area zoned for housing in the capital cities.

SOGFBIH	ALVRS	UORH	SOS	ZELS	UOM	SCTM
25%-50%	5%-25%	5%-25%	0%	5%-25%	>50%	25%-50%
AKM	ACOR	NAMRB	CALM	UMM	AAM	
>50%	5%-25%	<5%	<10%	>50%	25%-50%	

Table 12 Rough estimation of percent of areas of informal settlements, versus the total area zoned for housing of the capital city.

The table shows that the phenomenon is flagrant in Montenegro, Kosovo and Turkey, but the situation is equally bad in FBiH (Bosnia and Herzegovina), Serbia and Albania. It is evident that Slovenia, Bulgaria and Moldova do not face any serious problem related to the formation of informal settlements, which is frequently reconfirmed in this study.

The types of informal settlements are quite diverse and can be analyzed by size, location, population characteristics and spatial organization. Differences are reflected in construction standards (from slums to luxury villas), location (from suburbs to urban centers, protected areas) and size (from a few small housing units to settlements with over 50,000 inhabitants – e.g. Kaludjerica, located in the outskirts of Belgrade). Differences are also observed in terms of the ownership structure and types of land on which these settlements are built.

For the purpose of this study, we have broadly classified informal settlements into two main types, primarily according to land use:

1. Slums – informal settlements built on public land and usually inhabited by a high percentage of under-privileged population groups, primarily Roma; these settlements are not dominant; these slums are inhabited by the poorest, the buildings are unfit for human habitation, made from scrap and materials inappropriate for building and without any or only basic infrastructure.
2. Large peri-urban residential settlements with family houses (standard size and structure of houses typical for individual housing construction) built on privately or publicly owned land (mainly agricultural land) are the prevailing majority in the countries where the problem is significant.

This study will focus only on the second type of settlements and the informal houses in them. Depending on land tenure, they could have various forms, such as:

- Settlements in which a property may be located on invaded public or private land, where the structures are not in an area zoned for urban development and where the structures do not conform to official planning and building norms. No documentation may exist for such developments.

- Settlements in which the occupants have legally purchased land, but in an area not zoned for urban development. The structures may or may not conform to official norms, but documentation is restricted to ownership only.
- Settlements in which the occupants have legally purchased the land within an area zoned for urban development but where the structures do not conform to official norms and where documentation is limited.
- Settlements in which the occupants are the legal owners of land in an area zoned for urban development and in which the structures conform to official norms, but they have not completed the administrative procedures to prove compliance.

Common characteristics for all LGAs under study are large settlements built on agricultural land on the outskirts of cities, with the exception of ACoR, CALM and SOS. According to UMM, the usurpation of public land is the most dominant and is slightly less the case stated by SOGFBiH, SCTM and AKM. The construction of buildings and formation of settlements on illegally occupied agricultural land is observed only by SOGFBiH, SCTM, AKM and AAM, while the most common case is informal construction on private building land.



Figure 7. Bulgaria: lazovir Informal Settlement

4.2.2 Public services in informal settlements

The types of public services available in informal settlements differ but in general, their quality is inadequate. Different forms of functional infrastructure and public services are commonly available in the countries where informal housing is the prevalent form

of housing. In Turkey, major infrastructure and services are available in more than 80% of informal settlements, while the worst situation is in Moldova. In countries in which the informal housing is less common (Moldova, Romania, Bulgaria), sub-standard settlements are the most dominant urban form with minimum public services and infrastructure. This may lead to the conclusion that the support of the public sector generates informal development. If this is not the case, it at least suggests that the state is an accomplice in the problem. During socialism, as well as today, governments are tolerating informal construction as a kind of 'informal social policy' – since they are unable to provide decent housing to everybody, and are afraid of social unrests, they allow people to construct informally.

	Connection to mains supply (electricity network)	Connections to public sewage network	Connection to public water network	Access to public roads	Garbage collection
SOGFBIH	>80%	<30%	30-80%	30-80%	30-80%
ALVRS	>80%	30-80%	>80%	>80%	30-80%
UORH	>80%	<30%	30-80%	>80%	<30%
SOS	n.a.	n.a.	n.a.	n.a.	n.a.
ZELS	>80%	<30%	30-80%	>80%	>80%
UOM	>80%	<30%	30-80%	>80%	30-80%
SCTM	>80%	<30%	30-80%	30-80%	<30%
AKM	30-80%	<30%	<30%	<30%	<30%
ACOR	>80%	<30%	30-80%	<30%	<30%
NAMRB	<30%	<30%	<30%	<30%	<30%
CALM	<30%	0%	0%	<30%	<30%
UMM	>80%	>80%	>80%	30-80%	>80%
AAM	>80%	30-80%	>80%	>80%	<30%

Table 13. Availability of public utilities in informal settlements

The informal settlements are typically connected to the power supply and telecommunications and bit less frequently to the water supply. The standard and most serious problem in these settlements is the lack of sewerage systems due to its high cost. In the majority of entities, less than 30% of settlements are connected to the sewerage system, with according environmental effects. A similar situation occurs with waste collection. Of course, in many cases it is common to have informal communal equipment, built by the illegal builders, below official standards and often endangering the local ecology and living conditions.

Social services, such as schools, hospitals, libraries, recreation areas, organized open spaces etc., are present only to a very limited extent. Most often, these settlements use services available in the formal and established urban area at the periphery of the area they have

developed. This is, aside negative impacts on the environment, the major problem informal construction is causing to the city development – overloading of the existing infrastructure, not only communal (electrical networks, water, etc.) but also social (schools, hospitals, public spaces, etc.) that was originally designed for much smaller number of users. In some cases, informal builders are using common goods and are not paying for their maintenance, complicating overall urban development. In others, possibly the majority of cases, people in informal settlements are paying more for basic services such as water, than those with official connections. They may also have to pay bribes for tapping into other services.



Figure 8. Macedonia: Prilep – Streets in the settlement

The collection of utility fees in informal settlements has been organized in almost all observed entities, except in Romania and Turkey, and the rate of fee collection varies very much (less than 30% reported by UoRH, UoM, SCTM, AKM and CALM, and over 80% reported by ZELS and AAM). Fees are usually successfully collected for services that may be “cut-off”. Revenues from collected fees often do not cover sustainable maintenance of the utilities.

The property tax on informal buildings is collected in all entities, regardless of the legal status of the land, with the exception of ACoR, CALM, UMM and AAM.

4.2.3 Planning practice

Local general urban plans do not always recognize the existence of informal settlements (SOS, ACoR, NAMRB, CALM and AAM). In the lower level plans (general and detailed regulatory plans) of most of the other analyzed countries, the informal buildings are noted as having a current informal status²⁶ (except for the reported by ALVRS, UoM, ACoR, NAMRB CALM and AAM).

²⁶ This means different forms of legal tenure status, conformity with planning and building norms and documentary evidence of status.



Figure 9: Turkey, Istanbul - Ayazma Informal Settlement

The plans typically do not contain solutions for the consolidation of informal settlements or measures to prevent future informal construction. In certain specific cases, informal settlements may be given special attention through planning measures related to the recovery of the area, through separate rehabilitation plans (SOGFBIH) or by defining the area which will be solved by a lower level plan (UoRH).

In most cases it was demonstrated that provisions aimed at preventing uncontrolled urbanization contained in the plans have little impact and were not sufficient when there was no institutional will and capacity to solve this problem.

The urbanization standards vary between the analyzed countries. They include:

- a) full flexibility, where the buildings in the settlement can be legalized only in exceptional cases (UoRH, ZELS, SCTM, AAM);
- b) limited flexibility (SOGFBIH, ALVRS, UoM, ACoR) where standards may be lowered, but within a strictly limited range, and
- c) extreme inflexibility where exclusively regular standards are implemented (SOS, NAMRB, CALM, UMM).

Enhancing the planning practice in terms of recognition and adequate treatment of informal settlements and construction through all levels of local planning should enable long-term sustainable planning of the improvement and integration of these areas into urban entities.

4.2.4 Informal construction

Illegal housing construction, without urban plans, continues to a greater or lesser extent in almost all observed LGAs, except in SOS and NAMRB. Illegal construction continues to a significant extent as reported by SOGFBiH, SCTM and ACoR, while by UMM and by ALVRS, it is reported that new illegal construction is rarely found. In the other entities, at present, it is of very low intensity and includes mainly individual cases. A significant decline of illegal construction has been registered in Turkey in the last years due to stricter sanctions for the builders. Generally, one of the key factors for the reduction of unplanned construction was the adoption of regulations that impose duties and regulate the legalization procedure. However, there are also examples that legalization norms were not feasible in solving the problem and subsequent frequent amendments to these laws resulted in a considerable decline in the authority of the relevant bodies. A characteristic example in this regard is Serbia, where from 1996 to 2009 three laws on legalization were adopted; the two latter ones, in 2003 and 2009, were part of legislation regulating planning and construction. These interventions produced insignificant results, first of all because the legislation procedure is truly complex and because the administration lacks adequate capacities (man-power) for its enforcement.

	Individual housing (in thousands)	Condominium housing buildings (housing units in thousands)	Number of commercial buildings (in thousands)	Number of other buildings (in thousands)	Total number of illegally built buildings (in thousands)	Percentage of total number of illegally built housing units in total housing stock in the country
SOGFBiH	n/a	n/a	n/a	n/a	n/a	n/a
ALVRS	n/a	n/a	n/a	n/a	120	n/a
UORH	451	45	45	23	564	25%
SOS	n/a	n/a	n/a	n/a	n/a	1-3%
ZELS	n/a	n/a	n/a	n/a	320	n/a
UOM	57	9.5	9.5	19	95	30%
SCTM	650	70	70	140	930	40%
AKM	n/a	n/a	n/a	n/a	n/a	n/a
ACOR	n/a	n/a	n/a	n/a	n/a	2%
NAMRB	n/a	n/a	n/a	n/a	n/a	5%
CALM	n/a	n/a	n/a	n/a	n/a	<5%
UMM	1800	0	300	192	2292	60%
AAM	253	1	5.5	11	271	40%

Table 14. Estimate of the scope of informal construction per type of building

Individual residential buildings are by far the most frequent type of informal construction, located mainly in the peripheral parts of urban areas, although there is also a certain degree of illegal construction of commercial, crafts and other structures, and particularly vacation houses in regions attractive for tourism. The dominant type of informal individual housing is a self-built family house. There are informally constructed multi-family housing structures intended for sale on the market in all countries, except in Slovenia and Bulgaria. They are located in the bigger cities and in regions attractive for tourism.



Figure 10. Serbia: Belgrade – Contemporary building technology in construction of a residential building in Batajnica settlement



Figure 11. Romania: Botosani city – 21 houses built illegally on suburban agricultural land

Private informally constructed commercial premises exist everywhere, except in Slovenia and Romania. Legal constructions of smaller prefabricated commercial premises evolve over time into business expansion and illegal construction of far larger business premises. Informally constructed business premises intended for sale on the market exist to a significant degree only in FBiH (Bosnia and Herzegovina), Montenegro, Serbia and Kosovo, to a lesser extent in the Republic of Srpska (Bosnia and Herzegovina), Macedonia, Albania and Moldova, while this type of illegal construction is not at all present in Slovenia, Romania and Bulgaria. As a rule, business premises, i.e. enterprises, cannot obtain a business permit for operations in informally constructed facilities, which have not been legalized. A more frequent situation is to have such premises in buildings with a legal construction permit, but which deviated from the approved project.

Also, worth mentioning is that public structures are often built informally, particularly in FBiH (Bosnia and Herzegovina), Montenegro, Serbia and Turkey. Most often, these are usually situations of non-compliance with construction permits or inconsistencies with applicable urban plans.

Infrastructural premises have been informally built in almost all countries, except in Slovenia and Romania. In most cases, however, this type of informal construction is of very limited scope.

4.2.5 Real estate market

The large scope of the causes of informal development indicates the necessity to understand the economic impact of these settlements and buildings.

The existence of a market of informal buildings and transactions with the construction land on which they were built is not characteristic to most of the countries included in the study, except in Serbia and Bosnia and Herzegovina where it functions to a significant extent. The prices of informal buildings are up to 50% lower compared to new, legally built buildings. In cases of the sale of informal property, the price depends on the location, existence of infrastructure and presumed possibilities for obtaining the documents required for legalization. The most common reason for which these buildings are sold is the weak financial situation of the owners or the owners' desire to move into better quality (legal) housing. In Slovenia, it is strictly forbidden to sell illegal property, and construction inspectors are authorized to prohibit the transfer of land and entry into the cadastre.

The practice of renting informal buildings is more common than their sale, because it is less risky. However, in Slovenia and Romania these buildings are not rented. Where the practice exists, there is practically no difference between the rental price for a legal property and that for an informal one. The rent depends mostly on the existence of communal infrastructure and on how comfortable the premises are. Estimates are that space reserves in informal buildings, which could be used for renting apartments exists in Bosnia and Herzegovina, Croatia, Montenegro, Serbia, and Kosovo.

A serious problem for families living in informal buildings is that they cannot apply for mortgage loans. Only in Serbia it is possible to place a mortgage on an informal property, although this is not a frequent case. Most banks require, as a precondition for approving credit intended for the legalization of the property, written guarantees that the property can be legalized.



Figure 12. Croatia: Informal construction intended for commercial use in Vir settlement

4.3 Legalization

4.3.1 Legal and institutional framework

The legal provisions which regulate legalization of informal construction can be found in the observed laws and/or by-laws and municipal decisions by all NALAS member LGAs, except for UoM, CALM and SOS.

Significant differences may be observed regarding the criteria and the required preconditions for legalization – harmonization with provisions of the planning document, adequate technical quality of the building, different options for the treatment of informal buildings constructed in different periods of time, necessary technical documentation, deadlines, required approvals, etc. The key parameters of the legal and institutional framework for legalization are further comparatively analyzed in case studies of AAM, ZELS and SCTM.

The legal frameworks in the region can be distinguished into three general categories with respect to the treatment of informal settlements and informal construction:

- 1. Informal construction is not specially addressed by laws and plans**, while the regular procedures, laws and planning documents do not provide sufficient ground for the regulation of informal construction (UoRH, ZELS, UoM, AKM, NAMRB, CALM).
- 2. Basic laws on urban planning, by-laws and planning documents at the national and local level recognize and address the issue of informal construction** in separate chapters, in the attempt to regulate the most important aspects of the problem (observed by SOGFBiH, SCTM, UMM and to a lesser extent ALVRS and UoRH). In FBiH (Bosnia and Herzegovina), the federal planning law has a provision that legalization is possible and will be further ensured by respective cantonal laws.

In some respect, this concept implies that legalization can be a regular procedure, applied as long as the phenomenon exists. However, for the areas with massive informal construction, it is obvious that it is not possible to successfully merge the elements of a regular building process and elements of the extra-legal content of informal development - in the same law.

- 3. Special laws (*lex specialis*) and by-laws are in place, enabling efficient legalization and regulation** (as stated by UMM, AAM, SOGFBiH re the cantons and ZELS). In FBiH (Bosnia and Herzegovina), the legalization is applied according to cantonal Decisions on Legalization. In the Republic of Srpska (Bosnia and Herzegovina), however, local decisions completely regulate the legalization procedure, with the scope and strength of laws in other countries. In Montenegro and Croatia separate legislation for legalization was in preparation at the time of drafting this study. The opponents of the introduction of special laws have many valuable remarks, but the most emphasized is the potential devaluation of the regular spatial planning system and regular legal system²⁷.

Local regulations aimed at solving the problem of informal construction mainly relate to various types of decisions prepared by municipal administrations (Bosnia and Herzegovina, Croatia, Serbia, Turkey and Albania).

The legalization procedures most often do not differentiate and classify various types of informal construction. The buildings are classified to a certain extent in FBiH (Bosnia and Herzegovina), Serbia, Kosovo and Turkey by their size, purpose and construction technology. The classification of legalization claims according to the social status of the household is conducted in Macedonia, Turkey and Bulgaria, given the fact that informal settlements have been organized mainly within similar social groups. In these cases, the social criteria are not applied to individual informal constructions beyond the borders of the informal settlement.

Laws or by-laws, as well as decisions, contain provisions which in some cases (FBiH (Bosnia and Herzegovina), Serbia, Albania, Kosovo) facilitate payment of legalization costs for socially vulnerable owners. In Serbia and FBiH (Bosnia and Herzegovina), the fees are calculated separately or fully cancelled for housing properties up to 100sqm. In Slovenia and Turkey, all informal builders are given equal treatment.

In all entities, legal sanctions against informal construction exist, but they are very rarely applied. The problem is how to control informal construction – developers usually complete construction before the inspectors complete the inspection procedure. A similar situation is found regarding the execution of sanctions, i.e. the demolition of buildings.

A unique feature present in all the laws reviewed here is that informality (illegality) is determined only on the basis of the existence or non-existence of the building permit. Thus, the agency of the building inspector is the only institute dealing with informal construction and, further, with the anticipated removal of these buildings.

27 e.g. observe the 2011 discussion in Croatia upon the "Law on Proceeding with Illegitimate Buildings"



Figure 13. Bulgaria: Demolition of informal construction

Despite the fact that all the respective laws contain explicit provisions on stopping informal construction, these rules are not consistently implemented in most of these entities, which severely diminishes the governments' authority. In fact, these laws stipulate something the state cannot perform. In addition, implementation of legalization procedures is often corrupted with adaptations conducted in order to speed up the process (extension of deadlines and lowering criteria for legalization, no implementation of sanctions against informal builders, selectivity in processing applications, etc.).

All entities often share the common problem of a lack of harmonization with other laws and a lack of coordination with related procedures (expropriation, restitution, privatization, agricultural land, land ownership, taxes, the planning and construction process, construction and usage permits, cadastre, banking and mortgages, security and traffic regulations, communal infrastructure, public services, ecology etc.). This problem should be solved before or simultaneously with the elaboration of the legislation on legalization of buildings and regularization of settlements. In addition, even when regulations are based on good approach, they can be difficult to implement, because of costs, lack of capacities, too ambitious objectives etc.

Institutions

The institutional framework for legalization is usually set at both central and local levels. The state level is responsible for drafting and approving the relevant laws and by-laws, while the implementation of laws occurs mainly at the local level. The exception of this rule is in Albania, where the state is the main responsible party for implementation and in the Republic of Srpska (Bosnia and Herzegovina), where the local decisions on legalization

have all the detailed provisions that would be elsewhere stipulated in the national law. In the case of FbiH (Bosnia and Herzegovina), where there is also a regional (cantonal) level, the laws are brought by the cantons.



Figure 14. Moldova:- Chisinau, Valea Farmecelor (Valley of the Charms) – one of the biggest informal settlements in Chisinau, with a luxury villas/cottages zone.

Albania is the only country having a specialized state agency, ALUIZNI - Agency for Legalization, Urbanization and Integration of Informal Areas/Constructions. This very developed institution manages the entire process. The *lex specialis* in Albania has also foreseen the role of other important state and regional level institutions.

The local regulations define fees, minimal space planning standards and subsidies. The procedure is usually conducted by the town planning departments responsible for issuing building permits in the regular, legal procedure. In Albania, the Law foresees that the town-planning units at the local government are responsible for part of the legalization procedure. In general, special local government bodies that would be in charge solely for the legalization process are rarely found, except in the largest cities. With a significant number of applications, Belgrade (Serbia) has established a special Secretariat for Legalization for the entire metropolitan area with offices for each municipality.

More detailed explanations of legal and institutional frameworks in Albania, Macedonia and Serbia will be given in the following case studies, in chapter 4.3.3.

4.3.2 Practice

Despite the fact that informal construction has existed for a long time in SEE, the majority of local experts assess the legalization process as insufficient, and without an expected lasting and sustainable solution to the problem. The efficiency of the procedure was positively assessed only in Slovenia, Bulgaria, Kosovo and Macedonia, and as completely

inefficient in FBiH (Bosnia and Herzegovina) and Serbia. Some of the main reasons for the inefficiency of legal means may be found in:

- insufficient administrative capacity of the services which implement the procedure,
- complicated procedures and political pressure,
- tolerance of local authorities for individual cases of illegal construction,
- changes in legal provisions stimulating further illegal construction (lowering criteria, extension of deadlines, the procedure is cheaper than regular construction, etc.),
- non-fulfillment of sanctions envisaged by law, inadequate inspection surveillance,
- unfeasibility of laws

	Do you perceive the legalization procedure as favorable for poor builders?	Do you perceive the legalization procedure as favorable for rich builders?	If there are legal provisions for stopping further illegal construction, are they efficient?	Are the legalization fees redirected in improvement of the settlement?	What are the legalization costs comparing to ordinary procedure?	Percent of informal builders applying for legalization
	A	B	C	E	D	F
SOGFBiH	1	1	0	0	3	1
ALVRS	1	2	0	1	3	1
UORH	2	1	0	1	1	25%
SOS	0	n.a.	0	0	0	0
ZELS	2	2	1	2	2	90%
UOM	n.a.	n.a.	2	n.a.	n.a.	n.a.
SCTM	2	2	0	0	3	30%
AKM	1	2	1	1	2	80%
ACOR	2	1	0	0	0	>60%
NAMRB	1	0	2	1	0	80%
CALM	n.a.	n.a.	1	0	1	n.a.
UMM	0	0	2	1	0	10%
AAM	2	2	2	2	2	>90%

Answers for columns A, B, C and D :

0 - No; 1 - Yes, but not significantly; 2 - Yes, significantly;

Answers for the column E :

0 - More expensive ; 1 - Cheaper, but at cost level ; 2 - Cheaper, below cost level ; 3 - Cheaper and with special subsidies for some targeted groups

Table 15. Indicators of efficiency of the legalization procedure: estimates provided by the local experts

Although the majority of laws dealing with legalization define deadlines for submission of requests, the response of the informal builders varies, regardless of all advantages of the legalization process and offered incentives. Responses were assessed as low by ALVRS, SOGFBiH, SCTM, UoRH and UMM. The most significant response of informal builders to legalization is reported by NAMRB, ZELS and AKM. The ability to legalize a building often does not change the willingness of an informal builder to legalize it, unless they must do so (mortgage, sale etc.) or if provisions of the law force them to do so. In entities where the response to legalization is weak, the reasons are mistrust in local authorities, but also an unwillingness to undertake the financial duties that follow.

Law enforcement is an outstanding issue practically everywhere. This is the field where the State (both central and local governments) loses authority, adopting and maintaining regulations that cannot be implemented. Typically, the laws foresee demolition of the building, as a general sanction for illegal construction, but this measure is applied very rarely and most often just to show the political firmness of the government and send a warning to future illegal builders.

Except in Slovenia and Turkey, most illegal builders consider the legalization process to be much more favorable than the regular procedure. This is especially true of informal commercial builders, who enter into illegal development after calculating all costs, risks and benefits.

The cost for legalization also vary between entities, when these costs are compared with the costs of the regular, legal procedure. In Slovenia, Romania, Turkey and Bulgaria legalization costs exceed costs of legal construction because they include fines for breaching the law. Legalization costs are equal to those of the regular procedure in Croatia and Moldova, but sometimes are lower when all expenses (design, etc.) are calculated. A cheap legalization procedure is envisaged in Serbia, Macedonia, Kosovo and Albania (including payment of the fine), with the already mentioned special discounts for certain groups of informal constructors (Serbia, BiH). Judging from these fees, legalization in some entities may seem to be an amnesty (Macedonia, Serbia).

The following table shows all development costs in formal and informal procedures. The case for comparison is the development of a stand-alone residential building of a 100 m² net area, located in a cheaper suburban zone of the capital city or a large town.

The costs of the regular procedure (A) comprise all the costs paid to authorities to obtain permits (usually: planning, construction and a permit of use of the building) up to obtaining the right to register the property.

The costs of the legalization procedure (B) comprise all the costs needed to obtain the right to register the property. They do not include the costs related to the preparation of technical documentation (such as a geodetic survey and preparation of as-built design documentation) but only fees to be paid to the authorities.

Funds collected from legalization are often not directed to improvement of infrastructure and utility services in the settlements. Local budgets significantly finance additional infrastructure only in Macedonia, Turkey and Albania. In Slovenia and Bulgaria, the amounts obtained from legalization fees are shared among local self-governments and the national budgets. The collected fees are, however, insufficient to adequately finance urban plans and infrastructure improvements.

	A. REGULAR PROCEDURE					B. LEGALIZATION PROCEDURE					DIFFERENCE B/A	
	A.1	A.2	A.3	A.4	TOTAL A	B.1	B.2	B.3	B.4	B.5		TOTAL B
	Technical documentation	Different taxes in obtaining permits	Fee for infrastructure development	Property registration		Penalty	Technical documentation	Different taxes in legalization procedure	Fee for infrastructure development	Property registration		
SOGFBIH (FBIH)	1,000	1,800	n.a	n.a	2,800	200	800	1,800	n.a	n.a	2,800	100%
ALVRS (R. SRPSKA)	750	500	1,050	250	2,550	0	n.a	n.a	n.a	n.a	1,500	59%
UORH (CROATIA)	1,800	165	425	35	2,425	0	1,000	118	547	25	1,690	70%
SOS (SLOVENIA)	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
ZELS (MACEDONIA)	200	33	1,500	130	1,863	0	100	4	100	4	207	11%
UOM (MONTENEGRO)	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
SCTM (SERBIA)	180	50	12,850	50	13,130	0	70	35	2,950	50	3105	24%
AKM (KOSOVO)	1,000	1,200	170	150	2,520	0	500	1,200	170	150	2,020	80%
ACOR (ROMANIA)	2,500	500	4,000	3,000	10,000	5,000	1,500	500	4,000	3,000	14,000	140%
NAMRB (BULGARIA)	250	1,350	500	500	2,600	n.a	750	550	1,000	500	2,800	108%
CALM (MOLDOVA)	1,350	120	200	30	1,700	150	150	120	200	30	650	38%
UMM (TURKEY)	1,387	150	2,625	300	4462	n.a	n.a	n.a	n.a	n.a	n.a	n.a
AAM (ALBANIA)	n.a	n.a	n.a	n.a	n.a	4% of the value	n.a	30	5% of the value	n.a	3,000	n.a

Table 16 Comparison of development fees between the regular and the legalization procedures (prices in Euro)

4.3.3 Case studies

The need to adopt a special law for legalization is not the dominant conclusion among the opinions of the governments and academic bodies of the NALAS members.

For this reason, there is only one comprehensive law on legalization, which has now been in use for more than 5 years, in Albania (Law No.9482/2006). There are several partial cantonal laws in FBiH (Bosnia and Herzegovina) and also a new special law, adopted in Macedonia in spring 2011. Specialized laws are, however, being prepared in Montenegro and Croatia. Serbia used to have such special law in 1997, but it didn't bring the expected results. It was withdrawn in 2003, and replaced by a section on legalization in the Planning Law of 2009.

In this chapter, we have selected three case studies – two specialized legalization laws from Albania and Macedonia and one chapter from the Planning and Construction Law from Serbia. The reason for making such a choice are: Albania has the greatest problem with informal construction and by far the most developed legal and institutional system for legalization; Macedonia is the freshest example of a specialized law brought with strong political commitment and with already significant results (The law was adopted in February 2011.) and Serbia has probably the longest history of changes in legalization legislation (since 1997). The elements of the procedure and the institutional framework will be analyzed and compared.

4.3.3.1 AAM Case Study.

Special law on Legalization, Urbanization and Integration of Illegal Constructions (Law No. 9482 / 2006)

The roots of the present legalization law stem as far back as 1993, when illegal development was legally defined for the first time in the planning law²⁸, evolving further in 1998 with a whole section on legalization²⁹. The first specialized law on legalization and urbanization of informal settlements was adopted in 2004³⁰ and in 2006 when, with the assistance of a World Bank project, the actual legalization law established a comprehensive legal and institutional framework to conduct the legalization process. According to the data published by the National Agency for Legalization and Urbanization of Informal Areas/Buildings, the number of applications in 2006 included 270,595 buildings, while the number of completed applications that have received a legalization permit was only 5,000 in spring 2011³¹.

The content

The actual law is adopted in April 2006, consisting of 48 articles in 6 chapters:

1. General Definitions;
2. Central and Local Government Bodies [Tasked With] The Legalization, Urbanization and Integration Of Informal Areas/Constructions and Additions;

28 Law on Urban Planning No 7693 of 1993

29 Law on Urban Planning No. 8405 of 1998

30 Law No. 9209 dated on 23.3.2004

31 The main reason of the weak result is because the state has to compensate at market based rates all previous owners of the land on which the legalizing structures are built (from pre-communist era) for which there are not sufficient resources.

3. Procedures and Time-Frames;
4. Transfer of Ownership of Building Block; Legalization of Additions to Buildings and
5. Final Provisions .

The purpose of the Law includes:

- Legalization of illegal constructions built at formal settlements, informal areas, other territories, as well as illegal additions to legal constructions;
- Transfer of ownership of the building land on which an illegal construction is set up;
- Urbanization of informal areas, informal blocks and informal constructions, as well as their integration into the territorial and infrastructural development;
- Procedures for carrying out legalization of informal areas/constructions; and for
- Setting up and operating the structures responsible for their performance.

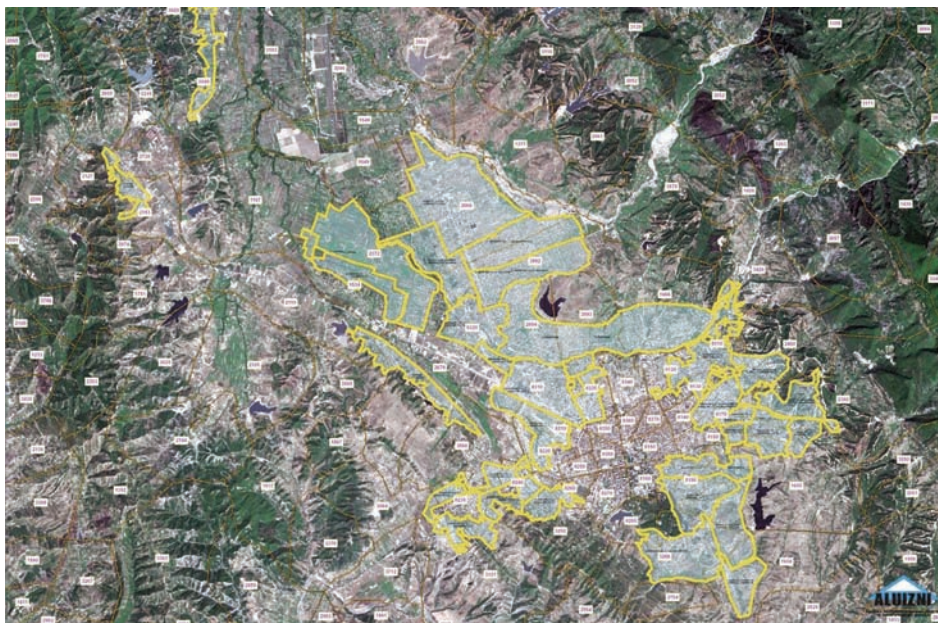


Figure 15. Albania, Tirana County – Informal settlements

The procedure

A self-declaration (application) by an interested person is the starting point in the process for an informal owner. All persons in possession of illegal constructions were obliged to submit a self-declaration about their property claim to the town-planning office 60 days from the entry of the Law into force. The legalization office was obliged to accept applications for an additional 60 days, but in this period late applicants were charged with a fine of up to 20 Euro cents per sqm, and after that an entity would lose its right to enjoy legalization. The application includes:

- self-declaration form,
- the building's photographs,
- certificates on household members and
- documents proving land ownership, if applicable.:

II Preparation of technical and legal documentation for legalization by the Aluizni (the specialized national legalization agency) regional office leads to further processing of the application collected by the LG's town planning office. It comprises on-the-spot verification (conducted by the LG's office), a qualification report, preparation of the General Plan of the settlement, an ortho-photo survey and preparation of the adequate urban regulatory plan. In this phase, the following documents are collected from the owners:

- technical documentation (site plan 1:500, each floor layout plans 1:100,
- technical report certifying structural sustainability, jointly declared by the informal owner and licensed engineer, releasing the State from any responsibility regarding security of the building,
- statement on agreement to accept implementation of the future regulatory plan, signed by the owner,
- **proof of payment of financial obligations (legalization tax)**

III Transferring land ownership and registering property title results from the legalization permit, while the important issue is compensation of the owners of the land occupied by informal builders.

Transfer of ownership of land³² is the forced procedure and, is mainly conducted on the State's account. The State land in the size of a building lot (building block, but no more than 500 m²) will be transferred to the house owner without fee. In the event that the legalized building block is property of other private entities, the Council of Ministers, after delivery of the list by the Central Immovable Property Registration Office, takes the decision for remunerating the property owners in leke. Land that exceeds 500m² will be transferred at adequate market value. Previous contracts about land transfers between private entities in any legally valid form are accepted and taxed without interest.

A fine amounting to 4 per cent of the minimum fiscal price of the housing unit is applied to all informal building owners.

Dispute (with security measure of a court) between the entity and the owner of the private/bordering land, suspends the procedures for the legalization, which are again resumed, after the security measure becomes invalid.

Exempted from legalization are all additions and constructions, which jeopardize the regulatory plan, public interest with regard to the main roads/works of public infrastruc-

³²The state is basically giving the land for illegal builders for free, and is paying administrative costs. However, the State does not have the financial resources to reimburse the original (pre-communist era) landowners and the sum paid by the informal occupants is far too small to address this. Because the legalization process involves the legal transfer of the land to the present occupants, and because this requires the agreement of the original landowners after they have received their compensation at market based rates it has proved impossible to complete the process in all but a token scale – as seen in the figures above, where 270,000 applications have resulted in only 5,000 properties being legalized in 2011. The situation is currently a stalemate. New informal development is only being restricted by the reduced level of demand.

ture (for example, blocking public access, roads, collectors, dams, airports, or main lines in infrastructure), or the integrity of the monuments of culture.

IV Initial registration of the building in the cadastre.

The Law foresees the urbanization of informal areas, i.e. upgrading the existing infrastructure, public spaces and services, in parallel with phases III and IV. It is conducted after the urban studies are carried out by the LG and approved by responsible higher level-institutions. By accepting legalization and regularization of a settlement, the State accepts its responsibility to develop necessary communal and social infrastructure, with the exception of informally developed areas or points outside the approved legalization zones.

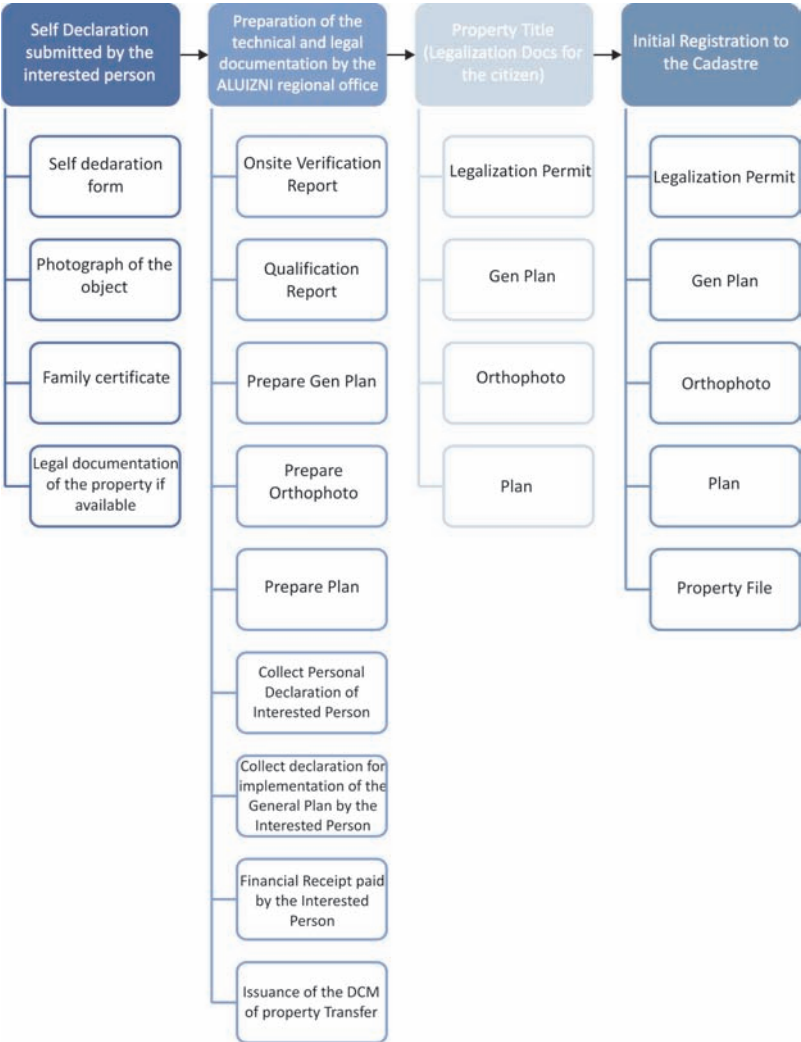


Figure 16. Stages of legalization procedure in Albania

Institutions

The main institutions that take part in the legalization, urbanization and integration process are:

The Council for Territorial Adjustment in the Republic of Albania (KRRTRSH) The national level body is responsible for major approval of determining the legalization of areas over 5 hectares and for the studies for their urbanization;

The Council for Territorial Adjustment (KRRT), regional level bodies, responsible for approval of decisions related to legalization boundaries and urbanization of the areas between 1 and 5 hectares;

“ALUIZNI” (Agency for Legalization, Urbanization and Integration of Informal Areas/ Constructions) is the newly established specialized state agency which under this Law coordinates the activities between the central government bodies and local government/municipal units. It issues legalization permits and conducts other organizational and professional duties. When the town-planning offices or regional councils fall behind schedule in exercising their responsibilities, then the ALUIZNI takes over these responsibilities. ALUIZNI:

- coordinates activities between the central government bodies and the local government units for developing and adopting town-planning studies;
- develops the minimum town-planning standards and norms for informal areas/constructions;
- identifies the procedures concerning the process of legalization, urbanization and integration of illegal constructions at formal settlements, informal areas and other territory;
- plans State Budget funds designed for the legalization and urbanization of informal areas and the necessary adjustments or, where appropriate, at formal settlements;
- collects and/or submits the documentation for legalization to the town-planning office, the regional council, the KRRT and/or the KRRTRSH (The local government unit does not exercise for whatever motive its responsibilities for the realization of the process. The manner and time for the exercise of these responsibilities are determined by the Council of Ministers); issues the legalization permit (under Article 27);
- sets up the database for illegal constructions and the legalization progress;
- develops an awareness-raising campaign in cooperation with the mass media at the national level; prepares handbooks on procedures, directives, forms and training sessions for local government units;
- supervises the legalization process and implementation of procedures by the local government units and regional councils.

The manner of the organization and functioning of this Agency, as well as the procedures concerning collection, processing and management of data, are determined by the Council of Ministers. ALUIZNI offices are set up at the central and regional levels and at special local government units with around 1,000 staff across the country.

Immovable Property Registration Office (ZRPP), which has a standard role in registration, but on the bases of documents issued by previous bodies;

The Town-planning Design and Study Institute (ISPU), which develops the minimum town-planning standards and norms for informal areas/constructions, in cooperation with ALUIZNI;

The town-planning unit at the local government level, which has important tasks to collect documentation during the self-declaration process; submit it to the relevant ALUIZNI office (for examination for the purpose of the legalization permit), check the real situation on site; develop or commission the mapping and build the necessary geographic information systems; carry out the technical updating of the layout on site; set design briefs for urban planning studies and develop or commission them; .

The local government unit, which sets up the required local structures for implementing the legalization process; identifies on site those illegal constructions for which no self-declaration has been handed in, as well as future cases of illegal constructions erected after adoption of the Law, and initiates procedures for their demolition (under Law no. 8408/1998, *on construction police*); receives payments made by an entity legalizing construction, except for the land; manages the revenues generated and monitors their use; coordinates activities, where necessary, among the regional council, the ALUIZNI, the line Ministries and the KRRTRSH, so as to ensure the efficiency and progress of the process of legalization, urbanization and integration of informal areas.

4.3.3.2 ZELS Case Study.

Law on Treatment of Unlawful Constructions („Official Gazette of the Republic of Macedonia“ no.23/2011, 54/2011)

The content

The law was adopted in February 2011 and amended in April 2011. It consists of 35 articles and 11 chapters.

1. General provisions;
2. Procedure for establishing the legal status of an unlawful construction;
3. Decision for establishing legal status;
4. Appeal procedure;
5. Purchase of land in ownership of the Republic of Macedonia where an unlawful construction is built;
6. Removal of unlawful constructions;
7. Decision for potentially unstable zone;
8. Register of submitted requests for establishing the legal status of unlawful constructions;
9. Supervision,

10. Misdemeanor provisions and

11. Transitional and Final Provisions.

The purpose

The Law deals with illegal construction in cases where the structure itself and the installations were fully completed by the date of entry into force of the Law and constitutes a unit in terms of construction and function. *The establishment of the legal status of an informal structure* implies entering the illegal structure into public records containing registration of rights over real estate and its inclusion into spatial-planning documentation.



Figure 17. Macedonia: Prilep – modest individual houses in the informal settlement

The procedure

Procedure for establishing the legal status of an unlawful construction includes the following key steps:

I – Submission of request – The request shall be filed within 6 months of entry into force of this Law, together with the following documents:

- identification document;
- evidence of connection to utility infrastructure;
- authenticated statement verifying that the construction was built before the Law entered into force;
- geodetic report on the factual state of the construction, proof of ownership;
- agreement on the long-term rent or purchase of land on which the structure had been constructed.

Where the request is incomplete, where the ownership status has not been cleared or there are manifold conflicting requests, the procedure shall be discontinued and information shall be given on the additional documentation required. Where the structure had been constructed on land with no registered rights, the competent body shall report *ex officio* to the Agency for Real Estate Cadastre, which shall start procedures to register the rights over the land.

II – On-site inspection – Upon receiving the request, the commission established by the body in charge of applying the procedure, shall determine on-site the factual characteristics of the construction and shall report on the findings, including technical data on the construction and photos.

III – Urban development approval – This shall be issued by the competent administrative body within 6 months of the day on which the request had been received, after establishing that criteria for incorporating the construction into urban-planning documentation have been met and upon receiving prior opinion of the local self-government. Where the construction shall not meet prescribed conditions, the request shall be denied. Apart from a proper request with all the necessary evidence, in order to obtain the urban development approval, it is required to also submit: protocol on the performed on-site inspection; proof that geo-mechanical stability standards have been met where the construction is situated in a potentially unstable zone; approval of the competent body where the construction is in a zone or area belonging to a national park, protected site etc.

IV – Fees for establishment of legal status – Within 5 days after the urban development approval has been issued, the amount of the fee shall be established, to be paid by the requester within 10 days or in 12 monthly installments. The amount of fee for residential constructions is EUR 1/m². Beneficiaries of social assistance shall not pay the fee. Local self-government units shall dedicate the funds collected as fees for the purpose of adopting documentation related to urbanism and planning and to regulate spatial infrastructure.

V – The document establishing the legal status of the informal construction is the final document, and it constitutes the legal basis for registering ownership rights over real estate, with written notification indicating that the construction has been legalized pursuant to this Law. It shall be issued within 5 days following the day on which proof of payment of fees is submitted.

Purchase of State-Owned land on which an illegal structure has been constructed shall be completed within 6 months following the day on which the urban and planning documentation was adopted. When the owner of the construction does not submit a request to purchase the construction land, long-term rent of construction land shall be established *ex officio*.

Constructions shall be removed when they do not meet criteria under which urban development approval is issued, i.e. where such request has been denied. The same applies to structures which were subject to additional construction works after the request was filed, regardless of whether such structure meets conditions required for establishing its legal status.

Institutions

Competent for the procedure shall be the state administrative body in charge of spatial planning and the local self-government unit. The state administrative body shall implement the procedure regarding structures with significance for the Republic, structures belonging to significant medical institutions and to electronic communication networks and equipment. The competent minister shall issue urban development approvals, by-laws setting forth in more detail the content of requests, standard norms for incorporating into the urban and planning documentation, etc.. Local self-government units shall apply procedures regarding structures which are of local significance pursuant to the Law on Construction, and for structures belonging to medical institutions within the primary and secondary healthcare systems. Local self-government shall also be in charge of decisions on potentially unstable zones, opinions relevant for the procedure under which urban development approvals are issued, as well as the adoption of urban and technical documentation relevant for the integration of informal constructions (within 5 years following the issuance of the document establishing legal status).

4.3.3.3 SCTM Case Study

Section on legalization in the Planning and Construction Law („Official Gazette of the Republic of Serbia“ No.72/2009, 81/2009, 64/10, 24/2011)

For almost a decade and a half, a number of legal documents have dealt with the issue of legalization of constructions in Serbia; however, the results are far below expectations. The 2003 Planning and Construction Law envisaged the possibility of legalization, but without elaborating criteria for its application. The 2009 Planning and Construction Law, and particularly the 2011 amendments to this Law, had to a great extent relaxed conditions for legalization without requiring harmonization with planning documents.

The legalization procedure is defined in 16 articles. It is defined as *the subsequent issuance of a building and utilization permit for a structure, namely those parts of the structure constructed or reconstructed without a construction permit*. The Law envisages issuance of construction permits for all structures reconstructed or upgraded without construction permits until the day on which this Law shall enter into force. Amendments to this basic Law introduced in 2011 provided for more advantages regarding payment of legalization fees for constructions belonging to socially vulnerable groups of the population, and it envisaged the local self-governments to have additional competences for obtaining the required documentation on behalf of the owner and for application of the procedure.

The procedure

The prescribed legalization procedure shall imply:

I Submission of requests – The requests shall be submitted within 6 months after the Law entered into force (by 11 March 2010); Documentation necessary for the legalization procedure: proof of ownership rights (possession, rent, right of use) over property or structure; photos of the structure; technical, geodetic and other documentation with differing content depending on the type and size of construction; administrative fees. In the case of

family housing structures of up to 300m², the technical documentation shall in terms of form and scope correspond to that of a simple technical report.

II - It shall be established within 60 days whether the submitted documentation is proper and complete and, if required, additional documentation shall be submitted.

IIIa - Dismissal of request, if deficient or incomplete after the dates expired or **denial of request** if there is no possibility for legalization, and referring the request to construction inspection for further procedure.

IIIb - Decisions on the possibility of legalization where conditions are met; informing the requester on the amount of fee.

IV - Fee for preparation of construction land – After making decisions on the possibility of legalization, the requester concludes the agreement on the payment of fee for preparing the construction land within 60 days; the fee shall be subject to discounts. The 2011 amendments to the Law envisages that the fee for family housing constructions and flats of up to 100m² shall be reduced by 99% for every 25m² per household member, and for a further 100m² the fee shall be reduced by 60%, except for constructions in the extra urban zone. Fees shall be established by each local self-government unit separately, and significant differences among them in regard to price have been identified. Criteria for reducing the fees in legalization procedures shall be defined by a separate Rulebook.

V - Single document on the construction and utilization permit the competent body shall issue within 15 days upon receiving proof of payment of the fee.

VI - Registration of ownership rights in the public registry on immovable property and related rights, shall be made on the basis of a final decision regarding the construction and use permit. The entry shall be made with a note indicating that the ownership rights over the construction have been based on the permit issued within the legalization procedure and that the State shall not guarantee the security of the construction.

The structure may be connected to the utility infrastructure on a temporary basis, until completion of legalization procedures. If not legalized, the construction shall be disconnected from the utility network.

The Law envisages also the **possibility to demolish structures** which will not be legalized; structures which cannot be legalized are defined in more detail: structures which are not in the final phase of construction; structures made on land which is unfavorable for construction and made of material which does not ensure the durability and safety of the structure; structures which were made on existing or planned public surfaces; structures in protected zones, except if competent institutions have given approval for legalization.

Institutions

Implementation of legalization procedures is within the competences of the local self-government unit. Such a unit defines the amount of fee, establishes in more detail compliance with required conditions (pursuant to general conditions required for construction or, each municipality prescribes legalization conditions by separate decision) and decides on individual requests for the legalization of structures. The 2011 amendments to the Law make it possible for the local self-government to obtain documentation required for the

legalization procedure upon written authorization of the owner and pursuant to the contract signed with the owner of the construction. Although the Law does not envisage so, a separate service has been formed in Belgrade due to the large number of requests and the need to coordinate the process – the Secretariat for Legalization Affairs covering the city's entire territory. The minister competent for planning affairs shall issue by-laws that shall establish in more detail the criteria for establishing the fees in legalization procedures; also, the criteria related to structures for which construction permits cannot be issued subsequently; and, the content and method by which the construction and utilization permit shall be issued for structures which are subject to legalization.

The below table comparatively analyses how some key issues are elaborated in the laws treating legalization process.



Figure 18. Serbia: City of Belgrade – “Sangaj” Informal Settlement in Batajnica. Within the ranks: electricity, water, asphalt.

Table 17 Comparative survey of basic features of the laws regulating legalization of informal constructions in Albania, Macedonia and Serbia

	Albania Law on Legalization, Urbanization and Integration of Illegal Constructions (2006)	Macedonia Law on Treatment of Unlawful Constructions (2011)	Serbia Planning and Construction Law (2009,2011)
Are the deadlines for application determined?	Yes, 60 days from entry of the Law into force. The legalization office accepts applications for 120 days but after 60 days a fine will be charged	Yes, 6 months from the entry of the Law into force;	Yes, 6 months from the entry of the Law into force;
Are the deadlines for processing application determined?	Yes, partial terms are defined, both for responsible institutions and applicants, but the full term for processing the application is not available	Yes, terms are precise – 6 months from submission of application is the deadline for issuing planning consent, or application rejection	No, there are no deadlines for actions by the institution in charge, but there are many partial terms related to the applicant's obligations
Is it mandatory for the competent authorities to register the existing informal structures prior to or in the course of settling legalization issues?	Yes, in the course of deliberations the local planning unit and ALUIZNI create a data base and map the situation regarding the areas and requests	No, only submitted requests are registered, not the informal construction in its entirety	Yes, within 90 days following the entry of the Law into force, the LG shall transfer to the line ministry a full list of existing informal constructions
Is it mandatory to elaborate GIS for territories with informal construction within the legalization process?	Yes, during deliberations the local planning unit and ALUIZNI create a data base and map the situations, and prepare GIS, which evolves from the legalization process	No	No
Is harmonization with provisions of existing planning documents a condition for legalization?	Yes, when dealing with areas with informal constructions, the local planning unit and ALUIZNI assess the degree to which existing plans have been endangered and decide on individual cases	Yes, urban development approval is obtained regarding possibilities to integrate the construction into the planning document	No, except where the structure is made on a land planned for constructions for public purposes (like infrastructural corridors)

	Albania Law on Legalization, Urbanization and Integration of Illegal Constructions (2006)	Macedonia Law on Treatment of Unlawful Constructions (2011)	Serbia Planning and Construction Law (2009,2011)
Are special urban standards established for the purpose of legalization?	Yes , the Town-planning Design and Study Institute develops the minimum town-planning standards and norms for the informal areas/ constructions, in cooperation with ALUIZNI;	Yes , the minister prescribes norms by which unlawful constructions shall be integrated into the urban planning documentation	Yes , the Law authorizes the local self-government to adopt separate decisions by which the existing Rulebook on standard norms shall be changed in accordance with local conditions for the purpose of legalization
Is it planned to adopt standard urban plans that shall definitely integrate informal constructions at the end of the legalization procedure?	Yes , upon completion of the process a new regulation plan shall be adopted, which shall include all approved cases and proposed regulatory solutions	Yes , it is envisaged to adopt urban and planning documentation which shall incorporate all cases approved for legalization within 5 years following the completion of the procedure	No , but it is implied that once the legalization process is completed the urban plans for settlements shall undergo regular amendment procedures
Does the legalization procedure envisage requests to be subject to integrated analysis within integral spatial units (informal settlements, neighborhoods, blocks) and draft plans related to the integration of objects and regulation of public surfaces?	Yes , the local planning unit and ALUIZNI set clear borders for spatial units, and work on decisions necessary for the integration of constructions, or prepare tasks related to studying these spatial units	No , requests are treated individually, within estimates made by local self-governments regarding the possibility of integrating the constructions into the planning documentation	No , requests are treated on an individual basis
Does the State assist in the solution of issues related to ownership of land?	Yes , the State approves subsidies for registration of ownership over State owned land beneath each structure. Also, it compensates the private land owner where the construction is on private land	No , there are no separate defined provisions	No , there are no separate defined provisions

	Albania Law on Legalization, Urbanization and Integration of Illegal Constructions (2006)	Macedonia Law on Treatment of Unlawful Constructions (2011)	Serbia Planning and Construction Law (2009,2011)
Is it possible to accept the owner's statement as evidence in the procedure?	Yes , for different issues in the course of the procedure it is also possible to accept the owner's statements as evidence (ownership, quality of structure, construction, etc.)	Yes , but only the statement confirming that the illegal construction had been built prior to entry into force of the Law	No
Is construction quality below existing technical construction standards accepted?	Yes , it is possible to accept it, provided that the architect, civil engineer and investor jointly make a notary statement that they guarantee the safety of the structure	Yes , rules of procedure enable structures complying with lower technical construction standards to be legalized	Yes , rules of procedure enable structures complying with lower technical construction standards to be legalized
Is the scope of required technical documentation below the one for the regular procedure?	Yes , requirements include a simple situational plan in the proportion 1:500, the floor layouts in the proportion 1:100, statement on the safety of the structure	Yes , requirements include a geodetic report, report on on-site inspection and photos of the structure	Yes , requirements include separate geodetic footage of the land parcel and the structure, a simple technical report and photos of the structure
Is a separate proof/ expertise on the safety of the structure required?	Yes , apart from the joint statement given by the architect, civil engineer and investor, the opinion on the structure's safety by the expert institution accredited with the minister is also required	No , only the proof that the construction is complying with norms regarding geo-mechanical stability if the structure is made in a potentially unstable zone, for which it is necessary to submit the main design – structural analysis; in the real estate registry a note shall be entered saying that the State shall not guarantee the stability of the construction	No , apart from a general opinion on the structure's quality in the technical report; when registering the structure in the real estate registry the entry shall include a note indicating that the State shall not guarantee the stability of the construction

	Albania Law on Legalization, Urbanization and Integration of Illegal Constructions (2006)	Macedonia Law on Treatment of Unlawful Constructions (2011)	Serbia Planning and Construction Law (2009,2011)
Are usual construction documents (urban, construction, utilization permit) issued in the course of legalization?	No , the legalization approval is a specific document in the procedure and it incorporates all three types of permits	No , the decision on legalization confirms that the construction complies with conditions for integration into the planning documentation and constitutes the foundation for registering ownership rights in public books	No , the construction and utilization permit are issued in one document, and the location permit is not issued within the legalization procedure
Are there incentives for the payment of fees?	Yes , legalization as a whole brings advantages regarding fees for the construction parcel in accordance with its size and there is relief on fees to be paid for the land beneath the object; reductions are applied to the legalization of only one informal construction per household	Yes , the amount of fee for residential constructions is only EUR 1/m ² ; beneficiaries of social assistance do not pay the fee	Yes , for family housing constructions of up to 100m ² , the fee is reduced by 99% for every 25m ² per household member, and for the next 100m ² it is reduced by 60%, except for constructions in the extra and the first urban zone; relief shall not apply to households which own more than one construction
Are special fines envisaged for minor offences?	Yes , a lump sum fine in the amount of 4% of the minimum value of the construction-tax bases shall be collected from all owners in the legalization process	No	No
Is the previously issued order on demolition of the construction revoked until the legalization procedure is completed?	Yes	Yes	Yes

	Albania Law on Legalization, Urbanization and Integration of Illegal Constructions (2006)	Macedonia Law on Treatment of Unlawful Constructions (2011)	Serbia Planning and Construction Law (2009,2011)
Is it envisaged to demolish constructions for which no legalization request was filed, or the request has been rejected/dismissed?	Yes , only indirectly, the law on legalization defines cases in which legalization shall not be accepted and shall refer to the basic act, the Law on Construction which sets forth the procedure related to informal constructions	Yes , only indirectly, pursuant to the Law on Construction; it is envisaged to demolish those constructions which were undergoing physical interventions after the request had been filed	Yes , once the procedure has been brought to an end by a ruling which dismisses or denies the request, conditions are met to demolish the structure
Is it envisaged to establish special institutions to implement the procedure?	Yes , "ALUIZNI" is the newly established special state agency (Agency for Legalization, Urbanization and Integration of Informal Areas/ Constructions)	No	No
Are the role of individual institutions in the legalization process and their coordination precisely defined?	Yes , the tasks and coordination between the following institutions is precisely defined: <ul style="list-style-type: none"> - The Council for Territorial Adjustment in the Republic of Albania; - The Council for Territorial Adjustment; - Immovable Property Registration Office; - The Town-planning Design and Study Institute; - The town-planning unit at the local government unit - The local government units 	No , except for the immediate administrative tasks of the competent local self-government unit and existing state bodies	No , except for the immediate administrative tasks of the competent local self-government unit and existing state bodies

4.3.3.4 Synopsis

By directly comparing twenty characteristics of the legalization concepts found in the three respective laws, the following can be concluded:

- **All three systems are conceived as a one-time correctional campaign** and not as longer term transitional means to solve the problems of informal construction as long as they exist.
- **The integral project approach is adopted by the special legalization law in Albania**, where the local institutions cooperate with the specialized national/regional institution in specially defined informal zones, to be regularized and integrated in future.
- **Closest to the concept of amnesty is the special legalization law in Macedonia**, offering legalization for only 1 Euro/m² and the most probable positive opinion of the local responsible body that the building complies with the spatial planning document.
- **The subjects of legalizations are treated individually, without interaction with neighbouring space and buildings** in the special chapter on legalization within the Planning and Construction Law, requesting more requisites, a more complex procedure and larger financial requests in front of informal builders

Comparing the particular issues, treated in the laws, it was observed that:

- **The deadlines, set for submission of applications are not realistic**; Two months in Albania and 6 months in Macedonia and Serbia, since coming into force is not enough for the institutions in charge to prepare the process and informal owners to prepare the requested documentation.
- **The procedure after expiration of deadlines for legalization is not solved in one case**; Implicitly, the activation of inspection requests for demolition of houses is meant, but it was not explicitly stipulated in any of the laws. If the number of unsolved cases is large (the cases that lose the right of legalization), removal would be impossible and new solutions will be needed again.
- **The way informal construction is evidenced and the role of GIS are important technical issues of legalization**; These questions are adequately conceived in the law in Albania, but are not addressed in the law in Macedonia and hardly possible in the law in Serbia.
- **An integrated processing of legalization applications, which takes into account relations between the building and surrounding space is needed. This sustainable practice is present only in Albania.**
- **The assistance of the State in conversion of land ownership and self-declaration in the procedure of determining land tenure rights are significant relief for the procedure** and are practiced in Albanian law, unlike in the other two laws.
- **Tolerating lower building standards and a smaller scope of design documentation is a positive legalization practice, found in all three laws.**

- **The expertise of security is an important issue;** In all three cases declarations on the quality of the building, conducted by a licensed expert is employed. While the Albanian law adds the expertise of the responsible state institution; both the Macedonian and the Serbian law transfer full responsibility for security of the building to the owner of the building.
- **Compliance with the existing spatial planning documents is not a precondition in any of the three laws;** in particular, lower urbanization standards are accepted in all three cases.
- **After completion of legalization procedures, it is necessary to integrate the informal settlement into the regular planning system, by adopting standard urban plans,** as is the case in the Albanian and the Macedonian laws; In Serbia, the obligation to pass new urban plans in relation to legalization doesn't exist.
- **The nature of the final legalization certificate is particular in all three cases;** They have specific new names, except in Serbia where a special act consolidates both the standard construction permit and the permit of use.
- **Significant financial incentives** are foreseen in all three laws, based on specific social criteria (size of the house, size of the household, etc). The most eased payment is in Macedonia where for a 100 sqm house all legalization expenses will be around 210 Euro.
- **Special fines related to misdemeanours of informal construction** exist only in Albania. The applied fine of 4% of the building value can be considerable and comparable to the fees for communal services; This can be considered as a proper approach for violation of rules and is one of the basic principle of legalization.
- **Previously brought municipal decisions on demolition of buildings are postponed until finalization of the legalization process** in all three laws.
- **The precise role of institutions and their coordination in the implementation of the procedure** is defined only in the Albanian law. The only new, legally established institution is ALUIZNI, the Agency for Legalization, Urbanization and Integration of Informal Areas/ Constructions.
- **The land ownership transfer** remains a key issue in Albania, since the state is paying compensation at market rates for the illegally occupied land. The needed funds are extreme and not available, which is the main point that put the process in stalemate. In Macedonia and Serbia, informal builders usually build on their own land.

Because of the significant efforts and partial successes of these actual legalization models in SEE, it is useful to take into account these comparatively presented features and these three legal documents. Through the Albanian legalization law, many specific important issues are opened and even solved, but certainly do not include everything needed. It is necessary to try to further improve the procedure through new models of legalization and regularization of settlements and through testing via pilot projects.

4.4 Conclusions and recommendations

4.4.1 Conclusions

The conclusions of this chapter relate primarily to the NALAS member LGAs statements with a significant presence of informal settlements. These are SOGFBiH, ALVRS, UoRH, SCTM, UoM, AKM, AAM and UMM.

- 1. The significant and in some cases immense volume of informal construction and the formation of informal settlements has been strongly present in the last two decades due to large social and economic changes.** As reported by some NALAS members, informal housing construction counts as much as 60% of the total housing stock (UMM). At the other end of the spectrum, some countries don't perceive informal construction as a significant problem, keeping it's volume between 1% and 5% (SOS, ACoR, NAMRB, CALM)
- 2. Main characteristics of these settlement are:**
 - a. They predominantly consist of modest individual housing in suburban areas, built by low-income families, but they can vary from slum housing to luxury villas;
 - b. The living conditions are decent in general, and the families living in them have solved their housing needs that way;
 - c. Utilities are always present, in a lesser or greater extent, which indicates that the state was supportive of informal urbanization and, to some extent, an accomplice in the violation.
- 3. Problems of informal settlements and their inhabitants are multidimensional and they are reflected in:**
 - a. Their functional and legal integration;
 - b. The lack of administrative and financial instruments to cope with the problem;
 - c. Difficult social integration of their citizens, that very often remain marginalized;
 - d. Limited access to public services;
 - e. The weakening of the legal system and the Government authority as a whole;
 - f. The unresolved land tenure of the informally developed land, occupied usually in many different ways, each one being difficult to solve;
 - g. Low standards of safety, high energy consumption and environmental impact;
 - h. Improper housing environment, as lack of leisure facilities and open space, and weak linkages to regular urban zones, etc.
- 4. The consequences of mass scale informal construction and informal urbanization are:**
 - a. Informal construction permanently changes the environment and may hinder the present and future development strategy of the city > land use conflicts;

- b. Informal settlements are generally isolated from the social development of the community > social stigmatization, lack of social and economic integration;
 - c. There are significant economic problems caused by the lack of administrative and fiscal instruments applicable to legally constructed buildings;
 - d. Environmental problems in informal settlements are obvious > lack of wastewater disposal, solid waste disposal, air pollution, open space/ventilation of settlement areas, etc;
 - e. Informal development, although being in the grey zone, represent important economic activity, both in construction and as a significant part of the housing market.
- 5. The legislative approaches in the affected territories differ from ignoring the existence of informal construction and settlements to the development of a detailed legal and institutional framework to legalize informal housing construction and integrate informal settlements in regular urban systems.** The legal frameworks in the region can be grouped into three general types:
- a. Informal construction is not specially addressed by laws and plans (SOS, CALM, NAMRB, ACoR, but also in UoRH and UoM33, where informal housing construction counts for 25% and 30% of the total housing stock, respectively);
 - b. Basic law on urban planning and planning documents at the national and local levels recognize and address the issue of informal construction. (SCTM, UoRH, AKM, UMM, SOGFBiH, ALVRS);
 - c. Special laws (lex specialis), bylaws and planning documents are in place (AAM, ZELS).

Where they exist, except in Albania, the laws do not address the problem of informal settlements as a whole, but are focused on uni-sectoral issues (primarily on the legality of ownership).

- 6. Planning always comes late, even after the settlement is formed, and often doesn't present solutions to consolidate the settlements and measures to prevent further informal development.**
- a. Planning documents usually do not contain solutions for the consolidation of informal settlements and measures for preventing informal construction;
 - b. The level of flexibility in planning standards ranges from the very high, the limited (standards can be lowered) to the strict application of regular planning standards for informal construction.
- 7. The practice of legalization hasn't accomplished significant results, most often because of unfeasible legalization regulations (SCTM) or unprepared capacities and inadequately overdeveloped procedures (AAM).** The main characteristics of the legalization practice in the region are:

³³ In fact, specialized legalization laws were being prepared during the preparation of this study both in Croatia and Montenegro, and it is expected that the laws will be adopted during 2011.

- a. Legalization is conceived as an amnesty, and the legalization process is much more affordable than the regular procedure for construction of the family house;
 - b. The administrative capacity in most entities is insufficient and inadequate for the effective implementation of the legalization process;
 - c. The penalties, even the removal of an informal house, exist in regulations, but they are not consistently enforced. Removal of the house, especially, remains as the main sanction for illegal construction, which proved to be inefficient in mass scale informal construction;
 - d. Frequent changes of adopted regulations stimulates the further generation of informal construction (lowering criteria, extension of deadlines, the procedure is cheaper than regular construction etc).
8. As the main outcomes, resulting from the in-depth review of three legalization laws, observed by AAM, ZELS and SCTM, it can be concluded that:
- a. **All three laws consider the legalization as a one time, limited corrective action (project)** and they do not foresee feasible solutions for the backlog of cases remaining because of, either 1) informal builders, for whatever reason, have not applied or 2) the legalization case is not solved. The practice in Serbia and Albania shows serious shortcomings in this respect given the fact that results of legalization campaigns are far below expectations. The mistakes are found in the short time limits for the submission of applications, and in unprepared institutional capacity, respective by-laws, manuals, funds, data, and institutional arrangements between key state bodies. Unpredicted huge financial burden on the state budget related to compensation of the land ownership transfer appeared to be the major challenge and the main reason for weak results of legalization.
 - b. **One approach is to place a fine on an informal builder and collect considerable finances through legalization and the other approach is to offer large incentives and give amnesty from the violation of illegally constructing.** The latter has strong deficiencies in 1) discriminating against citizens that respect the law and 2) sends a clear message that illegal behavior will be rewarded and encouraging potential illegal builders.
 - c. **The integrated project approach to the informally developed consolidated area exists only in Albania.** Case by case legalization, without taking account of the neighborhood, the division of public and private land, the integration of the settlement into the regular planning system and the provision of public services will keep the community excluded and further increase segregation.
 - d. **Participation of the community is not legally regulated or recommended.** Despite the fact that regularization of settlements will also result in certain physical interventions and the delimitation of public and private property, citizen participation is not foreseen in these laws.
 - e. **Integration of informal settlements into the regular planning system, before or after legalizing the buildings, by adoption of a regular urban plan is not foreseen as mandatory except in Serbia.**

- f. The need to define in detail the role of all involved institutions and to assign them concrete tasks in the process of legalization is not common to all the laws. This is addressed only in Albania, where a specialized state institution with regional offices and staff at the local level has been established. In the case of Serbia, the existing institutional capacities of the public sector are far from adequate to the scale of the problem. In Macedonia, results from the first months of legalization shows that the existing institutions are able to carry out the process satisfactorily. Adequate institutional capacity is certainly one of the crucial pillars of success of the process.

In general, judging by the results achieved so far, the existing legislation in the region has not proved to be efficient. There are many similarities stated by NALAS member LGAs, but also many differences, stemming from the genesis of the problem, varied socio-economic and political backgrounds and impact of the global economy on the rapid urbanization of cities.

More than half of the LGAs participating in this study share the significant problem of informal urbanization and illegal construction, keeping it high on political agendas and spurring efforts to adopt legislation on legalization. Nevertheless, the equally important issue of preventing further informal construction will remain if its causes are not reduced or eliminated. In the recommendations, the study will draw attention again to the causes of informal housing construction.

4.4.2 Recommendations

Informal development is a consequential process of historical and social-economic conditions in the European region under study, and not only a legal, planning or administrative problem. These processes are not yet completed, and their causes are still present. The economic strength of migrating populations is still below the level at which they can buy a house at market price with their income. At the same time, in all entities housing policy instruments are very scarce and are unable to provide affordable housing solutions at a larger scale. In addition, the economic strength in SEE is still at the level which does not allow governments to widely subsidize the housing needs of migrating populations.

Preventing further informal development will be best achieved by a) increasing the supply of land available for urban development (including expansion of urban boundaries and b) reviewing and, where appropriate, revising the regulatory framework of urban planning and building regulations, standards and administrative procedures to ensure they are based on effective patterns of demand.

Appropriate solutions will require adequate approaches, sufficient time and proper implementation. The harmonization of European space and European legal systems requires a successful solution as the foundation for further development as a whole.

4.4.2.1 Main principles for successful integration of informal development

The recommendations offered by this study are based on the following principles

1. **Settlements must be regularized and buildings must be legalized.** It is of fundamental importance to establish the successive social, economic, housing and planning models for integration of informal development and their communities in the urban system, wherever the public health and safety is not in danger;

2. **All owners of real estate must be included in the tax system;** It is important that taxes and other charges are affordable and that residents see that by paying them, they receive a benefit in return – e.g. access roads, public utilities (e.g. water, electricity and sanitation) and communal facilities (e.g. schools and health clinics).
3. **Informal development involves legal violation** in several aspects, and as such cannot be tolerated without being stopped, prevented and penalized; Legalization such developments should be considered however as reward.
4. **The legalization and regularization process is costly.** Informal building owners must fairly contribute to costs of general and local urban development;
5. **Most of the revenue from fees and fines should be implemented locally,** as a lasting contribution to the improvement of space and joint development of infrastructure;
6. **Direct participation of citizens in the process of regularization of settlements** and participation through elected committees and representatives is essential for successful legalization;
7. **There is no unique solution to solve the problems of informal construction and informal settlements** and the choice depends on the physical, social, economic and cultural context;
8. **Lowering the technical standards of the building is proving everywhere to be essential,** although some thresholds of tolerance have to be kept, primarily regarding of the safe use of the building. Nevertheless, by issuing legalization permits, the state does not share responsibility for the safe use of the building (which is the case with permits of use, issued in a regular procedure);
9. **Lowering urbanization standards is necessary** in order to include the settlement into the regular system of the city. Some security measures are, however, still present, primarily regarding security (such as maintaining access for firefighting); and finally
10. **Informal construction will exist as long as it is considered more favorable than the regular development procedure.**

4.4.2.2 Recommendations for establishing the appropriate legal framework for legalization of informal construction and regularization of informal settlements

Since the focus of this study is the legal framework, according to the actual situation with the problem of informal construction and present regulations, the NALAS member LGAs can recommend improvements in their respective legislation, following the proposed options below:

- a. ***Lex specialis* on central level and the following secondary legislation** should be adopted in cases where informal settlements and illegal construction become a widespread phenomenon and when the existing regulations are not efficient, producing multidimensional conflicts (AAM, SCTM, ZELS, AKM, UoM, UoRH, UMM, SOGFBiH and ALVRS);

- b. **For legalization, general planning and construction law** should be revised or new ones adopted and existing regulations amended in a synchronized way, in cases where there are areas with intensive informal construction, (NAMRB, ACoR);
- c. **Targeted improvements of existing regulations** are required when the areas with intensive informal construction are not of large scale (NAMRB, ACoR and possibly to a certain extent CALM).

4.4.2.3 Preparatory steps for realizing a national legalization program

In the first group of entities where informal construction is significant, it is recommendable to perform the following consecutive groups of preparatory actions, before starting implementing the legalization and regularization program:

1. **Adopt at the highest agreed level (national, regional, inter-municipal) a Strategy** for regularization of informal settlements and legalization of illegal constructions. The Strategy will be the basis for moving to other phases of preparation and implementation. The Strategy may be accompanied by an action plan or legalization program where all the needed steps will be defined in detail. The action plan is developed jointly with key institutional stakeholders, including the local governments. The role of the LGA in facilitating communication between the central and the local level can be crucial.
2. **Develop regulations and mandatory procedures for legalization of informal construction and regularization of informal settlements.** Special legalization law and bylaws must be adopted at the central/regional level. At the same time, all the existing laws that may be in contradiction with the process of legalization should be amended accordingly. The legalization law may foresee a testing period, during which the other elements of the preparatory stage will be conducted and the pilot projects implemented. In the implementation phase, the remaining operative bylaws manuals of procedures, forms, template of agreements, software and other needed documentation should be developed at the central/regional level and some bylaws and localized rules brought at the local level.
3. **Establish the necessary institutional framework** for addressing existing informal construction and preventing it in the future, at the national and/or regional level. The institutions to be developed at the local government and settlement level, should form part of program implementation.
4. **Develop capacities of institutions, professional services and local communities.** Training staff within national level institutions, professionals engaged in the legalization process (lawyers, planners, engineers, architects, geodetic surveyors) and disseminating information among the interested wider public serve to inform the affected individuals and prepare skilled staff for implementing the legalization program.
5. **Design and implement pilot projects** in selected informal settlements in order to test the efficiency of the procedures, identify barriers and obstacles, calculate real costs, define fees and their affordability and determine realistic timelines.

Outcomes of the pilot projects can give input to tune the new legislation within the testing period³⁴.

The realistic term in which the problem of the existing informal construction and informal settlements should be solved, judging by the achieved results to date and incremental process, should not be calculated for less than one decade..

This will also mean that all related legal and institutional frameworks should be designed accordingly and regular budgetary provisions to finance the process, which cannot be financially self-sustainable at the beginning, ensured at all respective administration levels. Long lasting, affordable and sustainable collection of legalization fees, as well as the most effective use of financial resources, is essential.

Political support to the process and moreover, a consensus reached at the level of the parliaments, must be seen as a condition *sine qua non*, because of the particularly sensitive nature and long duration of the process.

4.4.2.4. Contents of the *lex specialis*

The special comprehensive law, which will enable legalization of informal buildings, land tenures and regularization of informal settlements, should contain:

- **definition of all specific terms** recognized in the legalization procedure, which differentiate it from regular house construction, ownership registration and urbanization procedures;
- **identification of the key public institutions** involved in the process and detailed definition of their role, mutual relationship and the way cooperation will be formalized; here, the law should foresee establishment of new institutions, if such political decision is brought;
- **stipulation of participation of citizens** from the affected communities, both from informal settlements and neighborhoods, if relevant, and stipulate general forms of participation and drafting manuals of procedure by the responsible national institution;
- **definition of the subjects of legalization** with all the cases where legalization will not be possible, listed and explained in detail (when the building blocks access, reduces aesthetic and other values of heritage and/or environment, and represents an obvious threat to health of the users (when set on a land slide or infrastructure corridor, etc.); it is advisable that land tenure resolution is done incrementally.
- **detailed definition of the legalization procedure** with description of all activities, responsibilities, decision and approval procedures, required documents and exact names of the template documents and forms that will be produced by the responsible institution;
- **detailed definition of the special procedure for registering the ownership** obtained through legalization, and allow registration of ownership on buildings without permits of use (with special notification);

³⁴ NALAS has implemented two pilot initiatives on legalization of informal settlements in Sukth (Albania) and Prijedor (Bosnia and Herzegovina)

- **definition of all the data** and sources of their official collection required for establishment of the comprehensive database of the legalization program, including GIS;
- **detailed operative terms for the realization** of a particular legalization project (a single informal settlement) **and overall deadlines** for implementation of the legalization program in the whole country;
- **appealing procedure and sanctions** for delays in administrative procedures;
- **rules and formulas for calculating legalization fees**, respecting the types of informal construction and social criteria, including the fine for violation and means of securing the payment, as well as the fees for taxes, urbanization costs, discounts, etc.;
- **rules for collection and use of funds** received through legalization, including mechanisms for controlling use of the funds;
- **general data on the technical documentation describing the building**, with details elaborated further in the bylaws or manuals;
- **general remarks on the standards required**, in proving tenures status, quality of the building and urbanization of the settlement, elaborated in detail in the bylaws;
- **remedial procedures** for bringing a building into an acceptable technical state;
- **monitoring instruments at all levels** for controlling implementation of the legalization program;
- **reporting procedures**, documents and responsibilities of the key implementing partners;
- **clear description of sanctions for further violation**, in case the informal owner rejects legalization. (Only in the rare cases when public interest or public or individual security is endangered, should demolition be applied as a sanction. Otherwise, the sanction should be a financial penalty, possibly progressive through time).

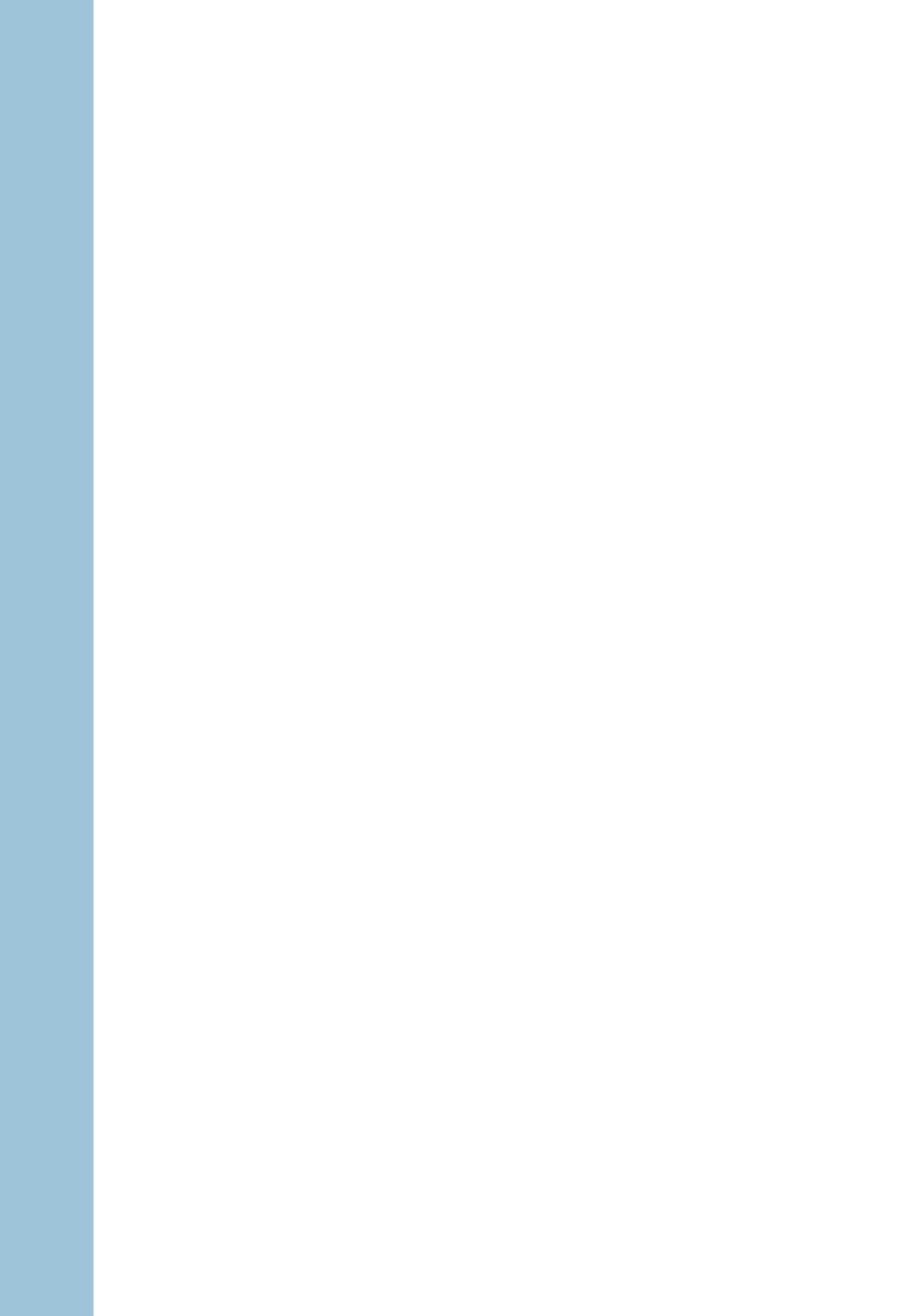


Figure 19. Albania: Paskuqan informal settlement - plan with informal buildings and land plot division

4.4.2.5. Specific recommendations for improvement of planning and construction legislation

Regarding regular planning and construction regulations, the following measures should be taken through amending the legislation:

- a. **Mandatory inclusion of the legalized settlement in the planning system of the city;**
- b. **Adequate definition of informal construction in regular urban planning documents**, but also to enable cadastre registration;
- c. **Appropriate measures for penalizing informal construction or improper use of urban land**, so that the legal option for local government to take over a proportionate part of the ownership (mortgage) exists in case of non-payment of tax or fine;
- d. **Regular revision of planning documents** and more flexible application of their provisions.



5. Model procedure for regularization of informal settlements and legalization of informal construction

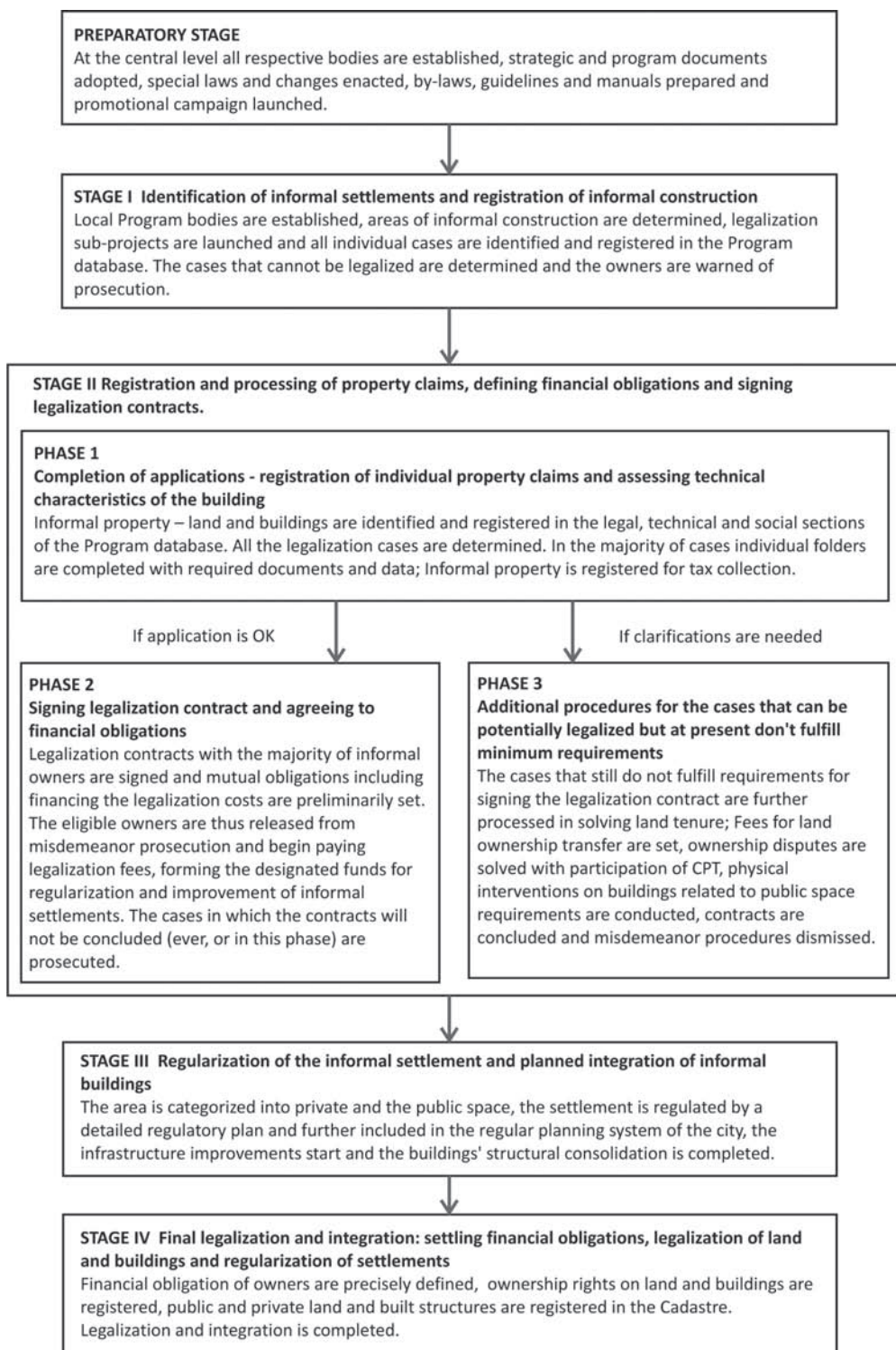
Several procedures have been already legally introduced and tested in the territories of NALAS members, but nowhere are the results considered to be satisfactory. All models have been found deficient in some attributes or even in certain principles that caused them to be considerably ineffective.

This chapter presents a possible model procedure following the results of a comparative review of the laws and practices among NALAS members with special attention given to detailed analysis of legalization legislation and results in practice in Albania, Macedonia and Serbia. This model is rooted in the principles and recommendations mentioned previously in chapter 4.

Important points to better understand the proposed model are that:

- legalization is based on the *lex specialis* where the main presumption is that informal construction is the legal violation of the owners and developers and lasts as long as the property is not legalized³⁵
- the punishment for this violation is never demolition of the illegal construction, but a continuous monthly fine, significantly higher than legalization costs
- the model cannot fit to all the systems, but rather provides an overview of feasible steps and organizational structure in which the LG has a focal role, especially keeping in mind the context of the CLAI study, which advocates for strengthening the capacities of LGs and LGAs.
- the model primarily addresses first-home cases, which represent the bulk of informal construction and settlements. Informal development for commercial purposes is not a subject of this study; however, in settlements that are subject to legalization these cases may be frequent.
- the model of the procedure is expressed as a legalization “Program” at the national or municipality level and refers to “Project” when applied to a singular informal settlement which is the subject of legalization.
- “legalization” stresses legal components (including space and building regularization as a condition), while “regularization” is seen as the integration of informal buildings and settlements into a standard urban order and functionality (including legality). The presumption of this approach is that it is not acceptable to take up one measure alone, without the other.

³⁵ Except in the cases of obvious danger, as are the locations in areas prone to floods and mud slides, under high tension lines, insecure static of buildings, especially in areas prone to earthquakes, etc.



5.1 The procedure

The procedures and actions involved in regularization and legalization are large, complex, costly and long lasting. The model proposes a gradual process, divided into several stages. The results of each stage can be formalized into individual documents. It is possible to follow the progress for each individual case, each settlement, municipality or region. This gradual process is presented in five main stages, including the preparatory stage. The responsible institutions are given at the end of each activity.

5.1.1 The preparatory stage, performed at the central level

Expected results: All respective institutional bodies are established, strategic documents adopted, laws drafted and passed, detailed by-laws, guidelines and manuals prepared and promotional campaign launched. In particular:

- 1) **Governmental decision** to conduct the legalization of informal settlements and buildings in the country is brought (Ministry in charge of planning, the Government),
- 2) **Governmental inter-ministerial Steering Committee for Legalization of Informal Settlements is constituted**, (Prime Minister, ministries in charge of planning, finance, justice, taxes, property, cadastre, housing, social welfare),
- 3) **Inter-ministerial working group** with representatives of all relevant ministries, at the level of executive managers, is established,
- 4) **Strategies for Legalization of Informal Settlements and the Informal Settlements Legalization Program** are prepared and adopted (the ministry in charge of planning, external expertise with staff of relevant ministries and institutions, the Government),
- 5) **Special legalization law** is drafted and adopted (experts group, respective ministries, the Steering Committee, the Government, the Parliament),
- 6) **Mutually harmonized amendments** in the basic and other relevant laws on planning, building, taxation, property, land preservation, ecology and others are proposed and passed (experts group, relevant ministries, the Steering Committee and the Government),
- 7) **National Legalization Agency** (or other respective institution) is established, its funding agreed, staffed and operational (Steering Committee, Government),
- 8) **Cooperation between institutions is formalized** through appropriate agreements (NLA, respective central institutions, LGA),
- 9) **Land data (orthophoto, topographic and cadastral maps) and GIS software is procured and completed** (NLA, cadastre, municipalities),
- 10) **Assessment of typology of settlements**, physical and legal characteristics of informal buildings and social and economic conditions of households is conducted (NLA, external experts, research institutes),

- 11) **Detailed procedures for implementing informal settlements legalization projects are defined** and approved (NLA, interministerial working group, local government representatives through LGA, Steering Committee),
- 12) **Implementation manuals are prepared** and approved (NLA, experts team, team of municipal representatives through LGA, professional institutions, Steering Committee),
- 13) **Information and education campaign** for the staff in local administration and professionals that will be involved in the process is realized (expert teams lead by the agency),
- 14) **Informal Settlement Legalization Program promotional campaign** is launched at the national/regional level, with the starting date announced in municipalities (NLA, Steering Committee, LGA, municipalities, PR institutions, media).

Estimated time: 12 months.

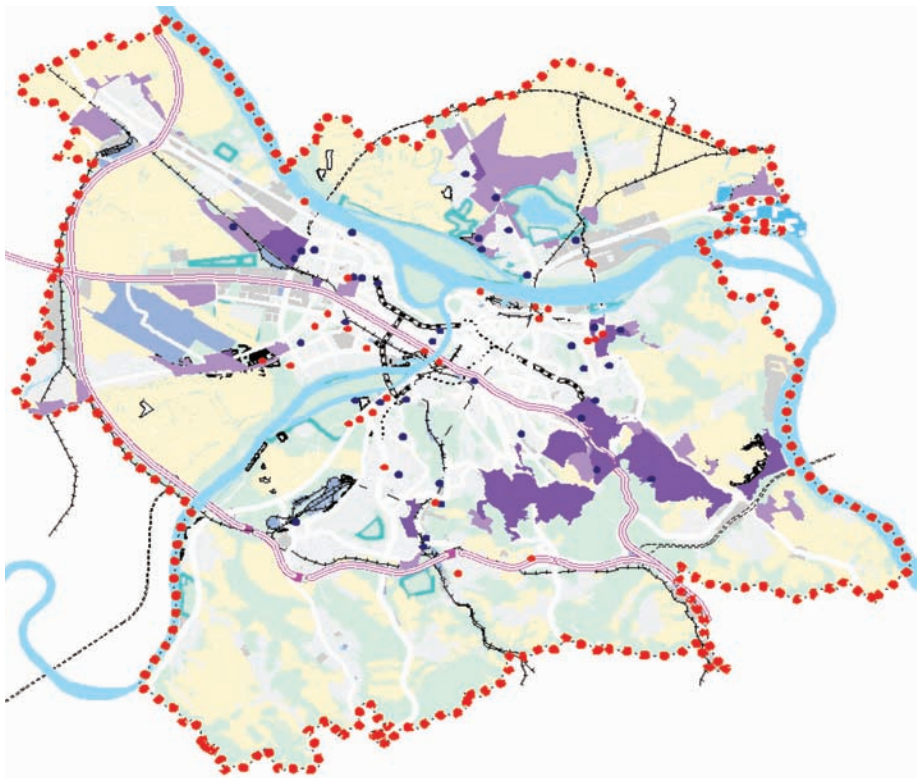


Figure 21. Serbia: City of Belgrade – Areas of informal housing construction in Belgrade, in violet (GUP of Belgrade to 2021)

5.1.2 Stage I Identification of informal settlements and registration of informal construction

Expected results: At this stage, the Program implementation starts; focus of activities is transferred to the local level and all the key local stakeholders are in place, the areas of informal construction are identified and settlements determined, sub-project for particular settlements are launched and all individual cases are identified and registered in the program database.

The subsequent steps of this stage are:

- 1) **Establishing a Municipal Legalization Steering Board**, composed of representatives of local government, local assembly and experts (optional, may be downscaled to the council member(s) in charge),
- 2) **Preparing and adopting Local Action Plan for Legalization of Informal Settlements and Buildings.** The AP comprises the general identification of settlements that will be legalized and the time schedule within the agreed Program implementation period. (LG, experts, CBOs, NGOs, local assembly),
- 3) **Establishing the Local Legalization Unit (LLU)**, (explained in more detail in chapter 4.5.1.2, ensuring financing, staff, training (LG, NLA),
- 4) **Collecting all existing spatial data**, including existing infrastructure, geotechnical surveys, Google Earth monitoring etc. and establishing GIS databases for the respective informal settlements (NLA, LLU, LG),
- 5) **Identification and determination of the borders of informal settlements** and zones of regularization and establishing baseline maps (LLU),
- 6) **Launching the Informal Settlement Legalization Program at the local level** for each particular settlement, according to the time schedule adopted in the AP. Each settlement will be treated as a separate project. (LLU, LG, PR companies, media),
- 7) **Establishing citizen information point** in municipalities (LLU, NLA, LG),
- 8) **Dissemination of promotional and detailed information material** to citizens and interested professionals (LLU, NLA),
- 9) **Identification and registering in the project database the informally built scattered buildings**, outside the determined boundaries of the settlements or zones of legalization, to be further equally treated in the legalization process, but without obligation of upgrade to the standard of services (LLU),
- 10) **Identification and registering the available data on individual cases and codification** (lots and buildings coordinates and sizes, and if existing, the address, owner's name, type of construction): The projects' databases are part of the local legalization program database. The local program database is directly linked into the legalization database, established at the central level, in NLA. The data bases should be usually linked within GIS where all the relevant and available graphic information exists, (LLU, LG planning department, NLA),

- 11) **Establishing a Community Participation Team (CPT)** that will represent the owners in the legalization process, (explained in more detail in chapter 4.5.1.3), (LLU, contracted NGO or other skilled organizations),
- 12) **Public call for self-registration** with a standard application form and detailed instructions. The call is open for a specific period. The instructions comprise also information on the entire procedure with criteria of distinction for legal, illegal and informal building lots and structures, criteria on what is possible to legalize and what is not, all requirements for further procedure stages, including financial obligations, alternative consequences - requirements for finishing the construction, incentives, penalties in case the owner doesn't accept legalization, time schedule, etc. (NLA, LLU, LG),
- 13) **Reception of applications and data entry in the project database.** The application contains: technical information (about the lot, the building or its informally built parts, the structure with a list of rooms and their size, a general description of the construction and its state); legal information (specifications of existing property documentation, list of owners and users, decision to accept legalization for selected parts or to remove them, etc.). The application is signed by the owner, in good faith, with personal responsibility for the accuracy of data (LLU),
- 14) **Analyzing and georeferencing the received data** (LLU),
- 15) **Official on-the-field inspection of the land and buildings**, identification and registration of individual cases of illegal construction, not reported within the requested time, preparing photo documentation (LLU),
- 16) **Responding to applicants** on the possibilities of moving into the next stage of the legalization process, with further detailed instructions (LLU, LG),
- 17) **Official submission of data on informal ownership to the Tax Department** for the purpose of registering them for property tax collection (LLU, NLA, Tax Department),
- 18) **Warning of the legal prosecution** of informal owners whose houses cannot be legalized and those that rejected to sign the application within the defined period (LLU, LG).

Estimated time 6 months.

5.1.3 Stage II Registration and processing of individual property claims, defining financial obligations and signing legalization contracts

The owner completes his application with the documents required for this stage. The positive results of its application will bring to conclusion the contract for legalization. The owners are motivated to conclude the legalization contract since the legalization cost is lower than the fine for violation, paid in case he/she rejects concluding the contract. Both payments are paid in monthly installments, against invoices sent by LLU, or by common utility payment service, if this exists. The payment of the fine lasts as long as the property is in a state of violation (not legalized).

All the evidenced (officially or self-reported) informal property owners (or users) are registered for property (or user) tax payment, irrespective of the further development of the procedure.

Charges against self-registered owners with a signed contract are suspended for as long as the obligations (and monthly payments) from the contract are obeyed.

The special funds for regularization do receive the important, regular and just source of revenue, and real improvements in settlements can start and develop.

5.1.3.1 Stage II Phase 1 Completion of applications - registration of individual property claims and assessing the technical characteristics of the building

Expected results: In this phase, all informal property – land and buildings on the territory in question is identified with its legal, technical and social characteristics and registered in the project database. All the legalization cases are determined.

The activities in this phase are the completion of individual folders with required documents and data entry.

An official side activity comprises registering the informal property in the tax department and commencement of levying property tax.

The detailed activities are:

- 1) **Completion of the Application for legalization by the owner:** Based on the positive reply to the initial application for legalization, issued by LLU, the informal owner collects the requested documents and technical reports, within a defined term. The documents are divided into two folders: Ownership Status and Technical Status. The requested documents are as follows:
 - a. **Ownership Status Folder** for the building and the building lot contains the factual owner's Declaration on 1) the form of use of the land (legal and illegal ownership's right of use, public or other's land usurpation); 2) form of use of the informal buildings; 3) list of users of the family house (as a temporary basis for further action); The declaration is supported by all relevant copies of official documents and contracts in connection to ownership or right of use. In some cases a statement signed by neighbors, showing that there are no disputes among them regarding land and buildings, should also be included. If, however, property disputes exist, the relevant written statements will be added to the folder.
 - b. **Technical Documentation Folder** consists of the minimum necessary technical data on the building and the lot (the first part of the basic project for legalization and regularization of the informal building) 1) digital geodetic survey of the building lot, the footprint of the building with distinction of different parts of the building (legal or informally added), main height points, topography of the existing buildings on the lot and contours of the neighboring buildings on the neighboring lots; 2) simplified plans of all floors with room structure, sizes and purposes, 3) photographs of all facades, 4) report on type of construction and estimated quality of structure and installations, especially in regard to hazards

(seismic, landslide, flood, fire or electric shocks). (owners, licensed professional services-geodetic, structure, architecture); It is also possible to organize a common geodetic survey of the whole settlement if the LG is prepared to finance the owners' duties in advance.

- 2) **Adjustments of existing and acquisition of additional information** with the CPT. The property and technical issues related to the individual parcels and buildings, as well as the preliminary discussions and agreements on regulatory division (public-private) are held. The consultations are part of trust building and transfer of ownership of the project to the inhabitants (LLU, CPT),
- 3) **Preparing spatial database** as basis for drafting of the Detailed Organization Plan of the informal settlement. Results of the geodetic survey are converted in the GIS database, already setting a planning structure for the regularization plan of the settlement (LLU).

Estimated time 6 months

5.1.3.2 Stage II Phase 2 Signing legalization contract and agreeing on financial obligations

Expected results: In this phase, legalization contracts with eligible individual informal owners are signed and mutual obligation including financing the legalization costs are preliminarily set. By signing the contract, the eligible owners are released from prosecution for violations and they start paying legalization fees. The specially designated budgetary funds for financing regularization and improvement of informal settlements are established. The cases where the contracts are not concluded (ever, or in this phase) are prosecuted.

The steps in this phase are:

- 1) **Opinion on the property claim.** The Ownership Folders are checked and analyzed; In case of need, additional information is acquired, either from the owners or from the program partners (Cadastre, Tax Department, Police). In rare cases, if the land has been legally acquired, but not registered, LLU can issue a request and forward the case to the Cadastre for the regular procedure of property registration. In other situations, if allowed according to the Program rules, an opinion allowing further legalization is brought by LLU and verified by NLA (LLU, NLA)
- 2) **Opinion on technical characteristics of the built structures.** LLU assesses the technical reports and design documentation and brings opinion on the fulfillment of minimal technical requirements, as defined in the *lex specialis* and the Legalization Program. In case of the need for improvement, the opinion states in general what interventions are needed to bring the building into compliance, based on which permit of use can be obtained in later stages. The owner is notified immediately and invited to start improving his/her building, although formal requirements will be given by the special technical inspection commission in Stage III. If the building's technical condition is such that it is not possible to bring it into satisfactory state, the opinion will state the reason why the legalization

claim cannot proceed to the next stage, i.e. the legalization of the building will not be possible.

- 3) **Legalization contract with eligible owners is prepared and signed.** The contract guarantees the owner that the property can be legalized. It includes the obligations regarding improvements of the building and the obligations of the municipality to provide services, as well as provisions on the preliminary financial obligations of the owner. At the same time, the conditions under which incentives may be obtained will be stipulated (LLU, LG, owners).

The financial obligations include state and local taxes, the monthly charge for legalization expenses (regulation of building lots, planning), land costs (in case the land is not possessed by the owner and is in public ownership), and cost of provision of the planned additional infrastructure in the settlement. Charges should be proportional to the predicted market cost, size of the land and buildings, type and use of property, implementation period and ability of the residents to pay them. The fees should also be subject to socially sensitive subsidies, i.e. deductions depending on the social and economic conditions of the household and size / value of the lot and the building. The legalization fees should be paid through a low interest long-term mortgage scheme offered by the LG. After completion of the legalization process, the total contract amount should be fixed, according to real expenditures.

Signing the legalization contract suspends all existing and potential fines, i.e. prosecutions against the informal owner. The contract can be legally transferred to a third party.

- 4) **Initiating misdemeanor.** For the small number of cases where legalization is not possible according to the constraints set in the *lex specialis*, and the previous was not obeyed, or in cases where the ownership situation is not cleared, LLU will initiate prosecution for violation and the owners should be soon charged with monthly fines. In cases where legalization will probably be possible, there will be additional processing, suggested in Phase 3. As long as these special cases are not solved, the owners will be charged with monthly fines. The fines paid until the legalization contract is signed will be converted into the payment of legalization fees.

Estimated time 12 months.

5.1.3.3 Stage II Phase 3 Additional procedures for cases that can be potentially legalized but at present don't fulfill minimal requirements

Expected results: The cases that still do not fulfill requirements for signing the legalization contract are further processed in solving land tenure, with the direct assistance of LLU; Fees for land ownership transfer are set, ownership disputes are solved with the participation of CPT, physical interventions on buildings related to public space requirements are conducted, contracts are concluded and misdemeanor procedures dismissed. The activities are:

- 1) **Developing alternative requirements and documents that can provide sufficient evidence of ownership:** a) demonstrating ownership, b) court proceedings, c) approval of interested parties, d) cases of exception; Developing standard solutions in cases when: a) the owner of the building is not the owner of the land; b) there is more than one owner of different parts of one building (condominium); c) part of the building interferes into someone else's land, and other related issues. (LLU, courts, external legal expertise).
- 2) **Defining fines, fees and standardized prices for the regulation of land ownership or lease criteria** (for public land, for private land), and conditions for eviction in extreme cases (LLU).
- 3) **Additional geodetic surveys when land property disputes exist.**
- 4) **Detailed analysis of the space regulatory requirements of the points where conflicts are identified** and a proposal of feasible solutions for execution and future planning documents with active participation of CPT (for example, the cases where full or partial demolition should be done in order to provide a space of common interest, i.e. access road and related compensations) (LLU, planners, CPT, NGO).
- 5) **Physical interventions on individual property related to organization of public space.** (owners).
- 6) **Mediation of disputes** with the CPT (LLU, CPT, NGO, owners in dispute).
- 7) **Issuing new certificates of preliminary qualification for the legalization of ownership** (LLU).
- 8) **Conclusion of legalization contract** (LLU, owners).
- 9) **Official request to court to dismiss prosecution for violation.** By signing the legalization contract, the owners are released from the charge of violation. LLU formally requests the responsible court to dismiss the charges. (LLU, the court).

Estimated time 12 months, activities overlapping with the activities of the first group of owners, which cases are further processed in the Stage III.

5.1.4 Stage III Regularization of the informal settlement and planned integration of informal buildings

Expected results: The space is divided into the private and the public, the settlement is regulated by the settlement consolidation (regulatory) plan and thus included in the regular planning system of the city, the infrastructure improvements start and the building's structural consolidation is completed. The most important steps in this stage are:

- 1) **Official technical assessment of structural conditions and security of buildings.** Under the specially developed procedure, the official Technical Assessment Commission checks security parameters of the buildings and issue technical reports with requested rectifications and improvements, if needed. In addition, technical advice to the house owners may be given upon request. (LLU, external expertise of licensed engineers).

- 2) **Emergency interventions are implemented.** In case of the need for an urgent physical intervention, such as landslides or other environmental hazards, general security measures are defined and implemented (LLU, LG).
- 3) **Consultations with the CPT** throughout all the steps of this stage. It is very important to stimulate citizens' participation, to organize workshops and meetings on the spot and in LG in order to reach commonly accepted solutions, especially in cases where particular interests will endanger common needs. (LLU, CPT, appointed NGO or facilitation services).
- 4) **Planning Scheme of the Informal Settlement is designed and approved.** The professional team of planners appointed by LLU, in consultation with all stakeholders, primarily with local community, drafts the initial planning document, specially defined by the *lex specialis*, as a basis for the future regulatory plan of the settlement. The agreed draft is verified by NLA (LLU, planning services, CPT, LG, NLA).

The Planning Scheme made for a neighborhood or the whole settlement is based on: a) the territorial definition of the settlement and zones from Stage I, b) the starting draft of the detailed organization plan of informal groups of houses and infrastructure from the Stage II. This scheme regulates acceptable integration of every building and land-plot in the settlement, dividing the public land with right-of-ways (by reposition or expropriation if necessary), utility infrastructure, access roads and traffic conditions, basic safety requirements, aesthetic maintenance of houses and environment, greenery, etc.

- 5) **Draft Implementation schedule and budgets for improvement of infrastructure and other related costs are prepared**, based on the Planning Scheme and forwarded to the relevant institution for approval and implementation. (LLU, LG, respective public land development institutions).
- 6) **Regulatory planning document for the settlement is prepared and adopted.** After agreeing to the Planning Scheme and the budget with the LG and CPT, LG procures preparation of the appropriate standard regulatory plan and prepares it for adoption in the local parliament. (LG, planning services, local parliament).
- 7) **Regulated and integrated settlement is included in the general town planning document.** LG initiates the change of the existing main town planning document to integrate the regulated, former informal settlement (LG).

Estimated time 12 months.

In parallel with the above-mentioned steps, other actions of Stage III include:

- 8) **Final physical parceling - separation of public and private land;** expropriation and construction of public infrastructure (LLU, LG),
- 9) **Final updating of the cadastral and topographic status of parcels and building.** (LLU, Cadastre),

- 10) **Final physical improvements of the buildings** to match technical requirements for legalization, with technical assistance provided (LLU, engineer services, owners),
- 11) **Completion of legalization design documentation**, as required by *lex specialis* for legalization purposes (owners, professional services),
- 12) **Monitoring of progress and direct interventions**, when required (NLA, LG Steering Board).

Outstanding cases, processed in Stage 2, Phase 3 should preferably be resolved within duration of the Stage III.



Figure 22. Kosovo: Sallahane Area in Ferizaj/Urosevac

5.1.5 Stage IV Final legalization and integration: settling financial obligations, legalization of land and buildings and regularization of settlements

Expected results: Financial obligation of owners are precisely defined, individual ownership rights on land and buildings are registered, public and private land and built structures are registered in the Cadastre.

The activities in the final stage are:

- 1) **Settling of one-off and long-term legalization fees.** The legalization contracts are annexed with final financial obligations, corresponding to the real expenditure of the legalization procedure, land servicing and infrastructure improvements. Depending on the national and local policy, these obligations can be subject to subsidies, primarily related to socio-economic criteria. (LLU, owners).
- 2) **Issuing certificate allowing registration of property rights** on the land and the building. After signing the annex to the legalization contract, i.e. settling financial obligations, LLU issues and NLA verifies the certificate for legalization. The note stated in the certificate contains:

- a. special conditions and terms under which the property cannot be sold,
- b. mortgage, in favor of the LG, equal to the indebtedness at the moment of issuing the certificate, as collateral for long-term repayment covering the contracted legalization fees and the expenses of regularization and services provision,

In cases when the permit of use for the building is not issued, the building can be registered in the property registry/cadastré through a special form established by the *lex specialis* notifying conditions that the building is registered without permit of use. In general, these buildings should be registered with the special remark that the registration is being conducted through the legalization procedure. All the mentioned data and restrictions are found in the project/program database (LLU, NLA).

3) Issuing permits of use comprise fulfilling the requirements defined in the *lex specialis* especially for the buildings in legalization. These actions are the following:

- a. Verification of design documentation required for legalization of the informal building; (LLU, appointed licensed design offices, or individuals, licensed to officially revise design documentation).
- b. Technical inspection of the physical improvements requested by the Technical Assessment Commission (within Stage III, Step 1). The commission issues an official report stating whether the preconditions for issuing the license to use are met. (LLU, engineers services).
- c. Issuing certificate of compliance with provisions from *lex specialis* by LLU, verified by NLA.

After the official request and technical documentation and reports and based on the certificate of fulfillment of preconditions, the municipal department formally in charge issues the permit of use. While issuing the permit of use for the building, it is essential to disclaim any responsibility for the safety of the building (LLU, NLA, LG).

4) Registration in the property and land registry/ies. The property is registered on the basis of the Certificate, mentioned in the activity 1 in this stage. With this final step, an informal building is introduced into the regular system. The buildings without a permit of use are registered with special notification. The registries (court/cadastré) receive official requests from the LLU. In this step, cooperation with the state institution and developed efficient inter-institutional procedure is essential. (LLU, owner, Property registry-court, Cadastre).

Estimated duration 6 months.

According to the estimated time needed for the steps in this model, the preparatory stage takes at least one year and complete implementation of a legalization project not less than 3 years. The number and size of projects affects the size of the involved key institutions, which is then in direct relation to the speed of the procedure.



Figure 23. Croatia: Vir Infomal Settlement

5.2 Organizational structure

Properly designed, staffed, funded, trained and long maintained institutions are the key to successful implementation.

The most important institutions are already introduced in the text.

The key stakeholders of the process are:

- National/Regional or inter-municipal specialized agency for regularization and legalization with the respective inter-ministerial Steering Committee,
- Specialized Local Legalization Unit in municipal administration with the respective local Steering board,
- Local Community Participation Teams.

Other stakeholders engaged mainly within the scope of their daily duties:

- Courts with local jurisdiction for violations in informal construction,
- Courts keeping property registries,
- Land cadastral offices,
- Town planning department in LGs,
- LG institutions in charge of public developments,
- Commercial, NGO offices and individual experts providing professional services,
- Civil Based Organizations protecting the interests of the community,
- Local Government Association, disseminating information on good practice, providing trainings for LGs, initiating improvements of regulations and procedures.

5.2.1 Key Program partners

5.2.1.1 National/Regional specialized agency (institution, office) for regularization and legalization

The National Legalization Agency (NLA) is the leading institution in the process of legalization. It is a state institution, responsible to the Government Steering Committee for legalization. The NLA works in partnership with respective specialized local bodies. The NLA can have its own municipal or regional antenna offices, or can remain at the central/regional level. Depending on the decentralization level, management of the process could be either within the NLA structure or at the local level. The proposed model is drafted on the presumption that local level management will be more efficient, but that may not be the case everywhere.

The main activities of the National Legalization Agency (NLA) are:

- establishing and maintaining data bases of records on all cases received from the local level, including GIS base of all relevant plans and surveys,
- drafting by-laws, developing guidelines, manuals and software,
- producing forms for applications, contracts and other agreements between the municipality and homeowners,
- preparation of draft agreements between municipalities and involved state public institutions and coordinating their signature,
- training, education and advice to the local implementing partners, municipal bodies,
- initiating and supporting the legalization projects in all stages of the process,
- approval of areas where special treatment (*lex specialis*) will apply, based on the proposals received from the local level,
- monitoring progress against the Strategy,
- oversee and intervene in coordinating the work of different actors in the field (relation between local legalization bodies and state institutions).

- regular reporting to the Legalization Steering Committee,
- comparative analysis and presenting cases of best practice

The size of the agency and its detached offices should be relative to the number, type and size of informal settlements and buildings in the area, as well as the predicted time for the implementation of the process. The tasks of the agency are temporary, but would last a few years after completion of the legalization program.

5.2.1.2 Specialized legalization unit in the local government

A specialized unit, a special team, or a special individual post in municipal administration should be formed, depending of the size of the municipality and extent of the problem. The Local Legalization Unit (LLU) works in cooperation with the NLA, or its detached offices, if they exist. LLU could be placed in the LG's institution that is responsible for public development and land management, since most of the key authorities that should be delegated to LLU exist in that type of institution.

Tasks of the LLU will be:

- management of the legalization process,
- determining space borders of each informal settlement on which the special regulations will be applied,
- launching the action of legalization of the settlement determined for legalization,
- reviewing planning and cadastral data with the situation in the field,
- preparing individual charges for violations in informal construction and illegal parceling of land,
- reporting to the NLA,
- maintaining communication with final beneficiaries through their representatives, workshops and campaigns,
- collection of official data from other central and local institutions,
- preparing the elements and concluding contracts with informal owners,
- overseeing the collection of fees and their further return in investing in improvement of local infrastructure,
- organizing and facilitating full participation of local citizens through their representation in Community Participation Teams in decisions related to physical interventions in their settlements, property disputes, infrastructure improvements, etc,
- managing improvements of public services in informal settlements.

The size of a specialized unit should be relative to the number, type and size of informal settlements and buildings in the area of the municipality, as well as the predicted time for the implementation of the process. The tasks of the unit are temporary, but should be integrated into the permanent scheme of municipal offices after completing of the legal-

zation action to monitor the prolonged processes (realization of improvement projects, realization of contracts, monitoring in the field, etc.).

It would be useful if the work of the LLU were controlled by the respective local legalization Steering Committee, composed of the members of the local parliament and council.

5.2.1.3 Community Participation Team in the informal settlement

Community Participation Teams (CPT) should be constituted (in the form of voluntary boards) of the inhabitants of a particular informal settlement, the final beneficiaries. The PT should also be extended to members of interested civil-based or non-governmental organizations. Those members can also be useful in mediating, explaining, controlling or just witnessing the process.

Each informal settlement should have one CPT. Its members should be elected or accepted by the majority of homeowners, and the duties that need specialized skills should fulfill the special conditions (e.g. secretary of the board, deputy of the secretary, technical consultants for constructions and similar duties). The process of establishing the CPT and its representatives should be facilitated, probably most efficiently by an NGO, contracted by the LLU.

The CPT is engaged in providing information, consultation and deciding and agreeing future physical interventions needed to secure common interests in the settlements. Formal representation of final beneficiaries also brings full legitimacy to the process.

5.2.2 Other stakeholders

5.2.2.1 Courts with local jurisdiction for violations in informal construction

Courts of the local territorial and organizational jurisdiction should be prepared to accept and process efficiently a great number of charges against the subjects of violation, in accordance with new definitions of violation in the *lex specialis*, changes in the basic law and relevant laws in connection to informal construction.

At one stage of the process, after the owner concludes the legalization contract, the LLU requests the court to temporarily place the charges, fines or verdicts on hold as long as the legalization process lasts.

5.2.2.2 Land cadastre and court property registry offices (in case cadastre and property registry are separated)

Registering real estate is an evidenced bottleneck in most of the compared systems. The special duties, standards and protocols should be defined to establish easy and quality data and documentation flow between the Cadastre office and the LLU and NLA.

During the legalization process, these offices provide all existing geo-referenced data concerning the property of the defined areas. At the end of the process, according to the specially defined procedure, they will accept final certificates brought by the LLU and confirmed by the NLA and register the land and built structures in the cadastre. The cadastral offices will also deal with models of transferring the occupied public land into the private

tenure - ownership or lease and develop a system of payment and compensation for different transactions with land and buildings. Cadastre offices will maintain and coordinate the main GIS databases on informal settlements in the municipality.

5.2.2.3 Town planning department in the local government

This department is commonly in charge of preparation of the spatial/urban plans and development programs at municipal territory and will be mostly engaged at the beginning and at the end of the process. These departments should:

- Provide the LLU with the existing planning documentation,
- Identify planning conditions that were neglected in cases of actual informal zones and settlements, and to rank and describe local conditions by importance,
- At the end, after settling down all of the solvable cases in the defined zones and settlements of informal construction, convert the draft Planning Scheme of Informal Settlement (created in the process of legalization and regularization on case by case interactive bases, organized by the LLU), following the form of the standard local urban planning document and procedure.

5.2.2.4 Local government institutions in charge of managing public development

Usually these are the public companies in charge of construction services webs, connection of buildings to services and service providers. Their work will be procured by the local institution responsible for public developments (it is recommended that the LLU is nested in that institution) through the infrastructure development programs, drafted by the LLU and approved and funded by the LG.

5.2.2.5 Commercial, NGO offices and individual experts providing professional services

The other professional services needed in the legalization process are:

- land surveying (preparation of digitalized plans of building lots, footprints of the buildings, other necessary details in topography, for the individual client or agency),
- urban design (preparation of drafts of the improvements of public space and relations between buildings, infrastructure and greenery for individual client or groups of building lots, or informal settlement for the agency),
- architectural design (reports on existing and improved states of the buildings),
- structural design and technical inspection (experts reports on the stability of house structure and provision of the design schemes for affordable corrections in bearing constructions),
- planning design (preparation of the draft Planning Scheme of Informal Settlement),
- infrastructure design (preparation of reports and plans on the existing and improved state of the communal infrastructure),

- public relations (preparation of public or board meetings, printed reports, communications, promotion actions),
- legal advisory services (keeping, proving, witnessing, defending, complaining, explaining, assisting in acquiring the needed documents- mostly in land ownership and regularization contracts),
- other small scale services that are needed during the process implementation.

The majority of the mentioned services is procured by the LLU and funded from legalization funds while activities related to completion of the Application for Legalization (Ownership and Technical Documentation Folders) are subject to direct agreement between the qualified and authorized professional companies or individuals and owners.

5.2.2.6 Local Government Association

The LGA can have an important role in the process in protecting interests of the local governments. From disseminating information on results of the particular projects, presenting good practice examples to provision of trainings for the LGs and initiating improvements of regulations and procedures, its contribution can be very significant.

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