Chapter 7
The Volatile Policy Framework of Spatial Planning in Montenegro: Will the Centre Hold?

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Abstract Over the last decade, spatial planning policy in Montenegro has become increasingly centralized. This chapter discusses the recent legislation in spatial planning and construction, through which the system of territorial governance is regulated. The chapter offers an in-depth focus on the evolution of centralizing tendencies within the planning process, which have prioritized the elimination of business barriers over the strengthening of local-level planning tools and capacities. The findings, based on the analysis of implementation challenges and wider policy effects of this approach, point towards the lack of efficient mechanisms for local-level participation in and control over the spatial planning system. Recommendations include shifting the focus away from centralizing the processes of territorial governance and investigating the potential of developing the regional dimension in spatial management. By distributing the responsibilities and the opportunities more evenly across the local, regional, and central levels of government, it might become easier to reach better, more inclusive, and more democratic decisions regarding spatial development.

Keywords Spatial planning · Territorial governance · Centralization · Montenegro

7.1 Introduction

The policy of spatial planning and development in Montenegro has been in a constant state of change, throughout its short history as a newly independent county in the Western Balkans. The challenges of large discrepancies in regional development, predominant reliance on service industry (especially tourism) and the financial imperative to attract direct foreign investments are unavoidably spatial and, as such, require an efficient and robust system of spatial governance. In an

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effort to construct such a system, Montenegro has, over the last decade, gradually shifted away from decentralized decision making in all matters related to spatial planning and development. The adoption of the most recent Law on Spatial Planning and Construction (Parliament of Montenegro 2017) marks a decisive shift towards centralization by taking the important instruments of spatial self-governance away from the local authorities. In this chapter, the centralizing process, its results, and consequences are closely and chronologically examined. The detailed analysis provided here aims to contribute to the recent body of work on territorial governance and spatial planning systems in the Balkans (Cotella and Berisha 2016; Berisha 2018; Berisha et al. 2018, 2020; Tošić and Živanović 2019; Berisha and Cotella, in this volume; Berisha et al., in this volume).

The first part of this chapter briefly introduces the history of Montenegrin spatial planning. The second part discusses the recent laws on spatial planning and construction, with an in-depth focus on the evolution of centralizing tendencies within the increasingly unstable planning system. The final part presents the implementation challenges, contradictions, and the wider policy effects of this development and offers some predictions for its future course.

7.2 The History of Spatial Planning in Montenegro

The territory which Montenegro occupies today has been under some form of spatial planning regime since the mediaeval period (Nedović-Budić and Cavrić 2006). The first proper urban plans were developed for the coastal towns: according to Doderović and Ivanović (2012), the first plan of Budva originated in 1708 (author A. Bekoni), while the first plan of Kotor was created in 1775 by Venetian captain F. Gironui. Regulatory planning was first introduced in Nikšić in 1883 by J. Slade, whose plan was held in high regard and used until 1941. However, the comprehensive spatial planning processes and documents were not developed until the middle of the twentieth century. This was due to the fact that, for the most part of its history, Montenegro was predominantly rural: urbanization coefficient was as low as 6.5% in 1921, growing to 7.1% by 1931 (Ivanović 1979, p. 85). Rapid post-war industrialization during the early years of Yugoslavia encouraged urbanization which was difficult to contain and control due to its scale, but also due to the lack of planning instruments and local resources. According to Ivanović (1979), proper urban plans were finally introduced after 1955; however, they were not of a very good quality and they lacked a regional development perspective, because the way in which they were produced did not provide the conditions for coordination and cooperation among regional communities. The first truly comprehensive spatial plans of Montenegro were created more than a decade later: the Regional Spatial Plan of South Adriatic in 1969, for the area comprising nine southern and central municipalities, and the Regional Spatial Plan of Northern Montenegro in 1972, for the area of eleven northern municipalities. With this, the spatial plans encompassing the entire territory of Montenegro were, for the first time, completed.

More detailed documents—specifically, general urban plans and detailed urban plans—were to be adopted at the municipal level. Even then, some municipalities, especially in the traditionally underdeveloped north of the country, found it difficult to develop local planning expertise and continued struggling in this area ever since. The spatial plan of the Federal Republic of Montenegro was created in 1986 (see Parliament of Montenegro 2008), laying out the spatial development vision for the period until the year 2000; it was amended twice, in 1991 and 1997. In the process of producing these documents, significant research has been done, and special purpose spatial plans for the areas of national parks and for the coastal region have been produced (Doderović and Ivanović 2013). Most of the municipal spatial plans and general urban plans were completed during this period as well.

In 2008, a new spatial plan of Montenegro was adopted, for the period until 2020. This was the first national spatial planning document since the country declared independence in 2006. According to Doderović and Ivanović (2013), some of the problems encountered in the process of creating this plan were lack of reliable data, lack of communication and coordination among the actors of the planning process, lack of institutional organizing in the area of spatial planning, inadequately regulated relations between public and private interests, as well as imprecise definitions for the concept of public good. The authors emphasize the importance of registering these shortcomings, and working towards achieving sustainable spatial development, greater public involvement, and democratization of decision-making process. They also underline the worrisome lack of coordination between institutions in charge of spatial management at the local and national level, noting that the regional level of planning has been almost completely neglected, even though the regional level is the most suitable for alignment of interests between local communities and the state, as evidenced by European practice in recent years (ibid., p. 520). Evidently, the spatial plan of 2008 uncovered some structural defects of the entire planning process, rooted in the lack of planning tradition and regional coordination. The question of how spatial planning can be done in a more structured, more open, and more democratic way—and the proposed development of regional plans as the possible answer—stays relevant in the light of recent legal changes which, once again, missed the opportunity to enhance regional cooperation in the field of planning.

7.3 Centralizing Tendencies in Spatial and Urban Planning

The Law on Spatial Planning, a legal framework for developing and adopting spatial planning documents, has been changed frequently since the beginning of the 1990s. The Law on Spatial Planning and Development (Parliament of Montenegro 1995) was succeeded by the new Law on Spatial Planning and Development (Parliament of Montenegro 2005), which was replaced by the Law on Spatial

Planning and Construction (Parliament of Montenegro 2008). Although each of these three laws, adopted in a span of a little more than a decade, introduced some changes to the regulation of spatial governance, the planning process was decisively and entirely reformed with the adoption of the new Law on Spatial Planning and Construction (Parliament of Montenegro 2017). The Law of 2017 centralized the decision making related to spatial planning, thereby concluding the process, which had been slowly developing since 2010 and which, through a series of amendments to the 2008 Law on Spatial Planning and Construction, increased the power of the state government at the expense of the local authorities. The new planning legislation has substantially changed the procedures, the actors, and the relations between the actors of the planning process. To understand and analyse this change, it is necessary to start with a detailed overview of the Law of 2008 and the Law of 2017—the spatial planning legislation adopted in Montenegro in the period after the 2006 declaration of independence.

7.3.1 The 2008 Law on Spatial Planning and Construction

The first Law on Spatial Planning and Construction of a newly independent state of Montenegro was adopted in August 2008 (Parliament of Montenegro 2008). According to this document, the objective of spatial planning is to provide conditions for the spatial development of Montenegro. The Law outlines a list of principles that spatial planning is based upon, which includes harmonized, balanced, and sustainable development, protection of natural resources, prioritizing of public interest, polycentricity and decentralization (ibid., Article 5).

The Law on Spatial Planning and Construction of 2008 (hereinafter: the Law of 2008) preserved the traditional hierarchical structure between the municipal and the state-level planning documents (i.e. spatial plans) and defined the separate local and central-level procedures for adopting these documents (Fig. 7.1). There are four categories of central planning documents: the spatial plan of Montenegro (strategic document, determining the basis of spatial organization and planning and the instruments of spatial development), the special purpose spatial plan (regulating the areas of special interest and regime of use, such as national parks, coastal zone, etc.), the detailed spatial plan (for the areas in which the construction of objects of state interest, or of regional significance, is necessary), and a state site study (for the areas which are in the scope of a special purpose spatial plan, but require more detailed elaboration). The categories of planning documents defined for the local level mirror this structure and include: the local spatial urban plan (determines the goals of spatial and urban development at the local level, and the measures of achieving them), the detailed urban plan (determines the conditions for construction in the territory covered by the local spatial urban plan), the urban project (for complex construction in smaller areas, or for the areas with distinguishing features), and the local site study (for the areas within the scope of a local spatial urban plan, where detailed urban plans or urban projects are not required).

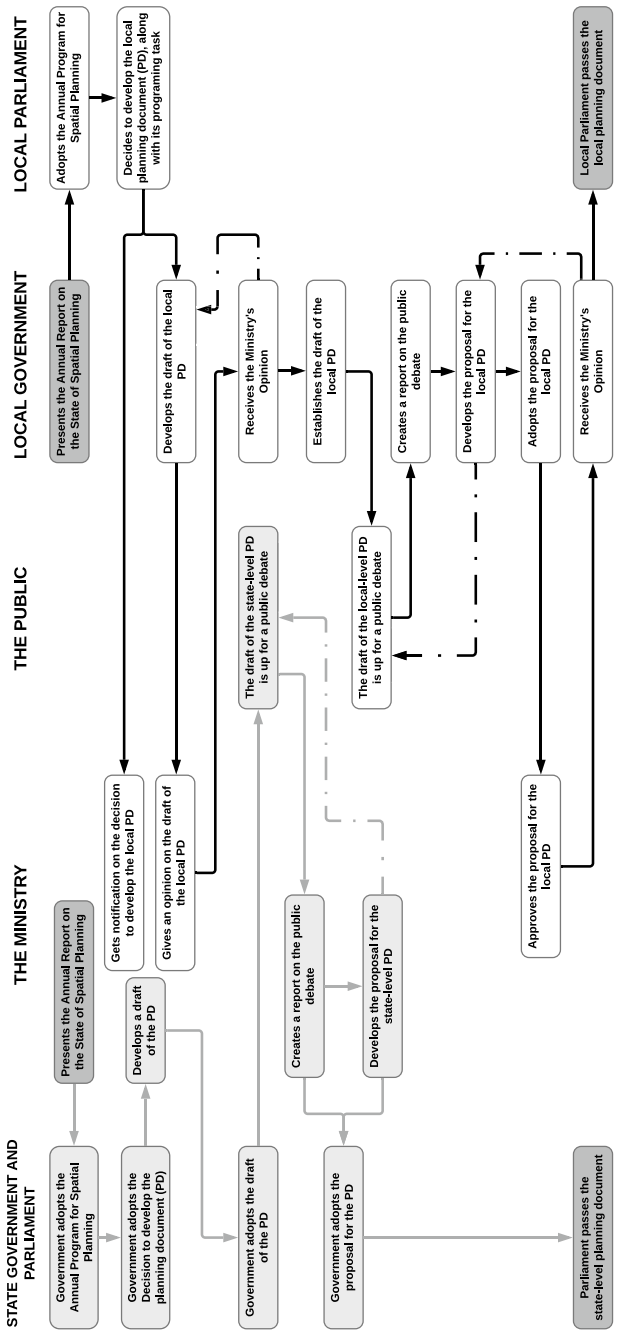

Fig. 7.1 Procedures for the adoption of planning documents, according to the former Law on Spatial Planning and Construction (Parliament of Montenegro 2008). *Note* Public debate is repeated if the proposal for the planning document is significantly different from the draft of the planning document that was originally put up for public debate. Also, if it is not in accordance with the opinion from the Ministry and with this Law, the proposal for the planning document will be returned to be improved.
Source Author's own elaboration, based on Dragović (2018)

At the municipal level, local government leads the process of creating municipal planning documents. The right side of Fig. 7.1 shows the series of steps taken by the local government, i.e. the executive branch, as defined by the Law of 2008. Local government develops an annual report on the state of spatial planning and presents it to the local parliament, where the decision to develop a local planning document is made and its programming task defined. The local government follows by creating a draft of a local planning document, of which it informs the state ministry in charge of spatial development; in 2008, this was the Ministry of Economic Development, later succeeded by the Ministry of Sustainable Development and Tourism. Once the Ministry approves the draft, the local government presents it for a 15–30 days long public debate, which is the instrument of public participation, giving the local community an opportunity to actively support or contest the plan's propositions. The results of this process are to be integrated in the next iteration of a local planning document: the proposal. If the proposal differs significantly from the draft, due to the changes resulting from the public debate, the local government repeats the public debate procedure. Once the final proposal is established, the local government seeks the Ministry's approval; when the Ministry approves it, the proposal is presented to the local parliament and, finally, adopted into a local planning document. Therefore, according to the Law of 2008, the Ministry is involved in the local planning process as a supervising body, in charge of ensuring that the local planning documents are made in accordance with the Law. The process is led and managed by the local government.

At the central level, the procedure is similar (as shown on the left side of Fig. 7.1). The Ministry produces the Annual Report on the State of Spatial Development at the national level, which informs the spatial planning-related decisions of the state government. The Ministry also organizes the development of a new state-level planning document. Municipal governments do not have a special role in the process of creating a central-level planning document; their involvement is contained within the frame of public debate, which lasts for 15–30 days and presents an opportunity for all interested public and private actors to take part in the development of a planning document. In both the local and the central processes of adopting a planning document, public debate provides a space for comments, critiques, and proposals, which are then sorted and analysed by the responsible (local or central) planning authority and, if considered relevant, built into the proposal. Like in the case of the local-level planning document proposal, the central-level planning document proposal may be put through more than one round of public debate before it reaches the form in which it is adopted by the government and then passed by the parliament.

As these procedures show, the Law of 2008 outlines two parallel, but clearly separated procedures for the adoption of local and national spatial plans, with well-defined roles for both the municipal and the central government. The Law of 2008 also regulates the way in which the planning documents coming out of these procedures—the local and the national spatial plans—should be coordinated and integrated. The local planning documents need to be in accordance with the central-level planning documents, which are of higher order. The Ministry oversees

this coordination: in the process of creating local-level spatial plan, the Ministry's role is to ensure that the Law has been followed and the regulations of different levels have been harmonized.

According to the Law of 2008, the details of the local spatial planning decisions have mostly been left to the municipal authorities. However, this Law left local governments wanting both more autonomy and more support. The Union of Municipalities of Montenegro (2009), the national association of local authorities, found the procedure of adopting the new and changing the existing spatial plans too cumbersome and suggested it should be simplified. This is one of the issues to which the Union of Municipalities refers in their 2009 review of problems in the application of the 2008 Law, which also includes the disparities between the plans at local and central level, the inconsistency in the plans of neighbouring municipalities, lack of local capacities for the production of spatial plans, lack of local expertise for the proper online presentation of planning documents (as prescribed by the Law), and, overall, insufficient time for the municipalities to adapt to the demands of the 2008 spatial planning legislation. To counter these problems, the Union of Municipalities proposed establishing a clear hierarchy of the planning documents along with the procedure for their harmonization, as well as the possibility of introducing regional-level plans, which would provide a framework for the development of regional cooperation in spatial planning. Other proposals referred to the need for increased state support in strengthening the local technical capacities, and for more time to implement the necessary changes. The Union of Municipalities also asked for improvements in the process of involving the public in the spatial planning procedures, suggesting that the Law should require the planning authorities to respond in writing to all the comments and suggestions received in the process and that, regarding the ways of including the proposals of the interested public into the planning document, more detailed clarifications should be adopted. An additional issue with the results of the participatory process is that the Law of 2008 prescribed how, once the draft of the planning document is updated with the results of public deliberation, it might be put through another round of public comments, provided that the new version of the draft is "significantly" different from the previous one. Since there is no definition of the "significant" difference, there is a possibility for arbitrary, case-by-case interpretations, which the Union of Municipalities noted as an issue with the potential to impair the planning process, to damage its participatory component.

Throughout the period of implementing the Law of 2008, some of the concerns expressed by the municipal governments were addressed. However, strengthening the local capacities was not the prime objective of the central government's actions, oriented more towards the improving of the business environment, i.e. making the process of obtaining building permits simpler and more affordable. An important part of this effort was the Land Administration and Management Project (LAMP), started in 2009 and supported by the World Bank, with the goal to improve the efficiency of permitting and property registration (The World Bank 2008). The project, which concluded in 2016, supported the creation of spatial planning documentation in less developed municipalities of the northern and central regions of

Montenegro: nine spatial urban plans were financed or co-financed through this scheme (in Cetinje, Danilovgrad, Bijelo Polje, Plav, Kolašin, Šavnik, Nikšić, Andrijevica and Pljevlja), along with 22 detailed urban plans in 10 municipalities. The project emphasized how, in the process of creating these plans, the participatory approach of the World Bank was employed, therefore securing high standards of transparency and civic participation (Ministry of Sustainable Development and Tourism 2016a). While this might have addressed some of the concerns regarding participatory procedures expressed by the Union of Municipalities, the legislative framework regulating public participation in spatial planning was not changed throughout the period of the Law of 2008 implementation.

Even with the support of the LAMP, the adoption of most local plans took much more time than the one year the Law of 2008 originally allowed. Subsequent amendments gradually extended this deadline until the end of 2015; however, not even by then had all the local governments produced and adopted their respective spatial plans. The state government reserved the right to adopt a local spatial plan if it was not adopted by the municipality, or if the lack of such document could cause damage to the environment or stagnation of local development. The fact that there is a legal instrument which allows for the state government to take over the responsibilities of the local government might solve the problem of adopting a missing spatial plan. However, as noted in the policy paper by the Centre for Civic Education (2014, p. 22), this does not counter the problem of lacking capacities at the local level, nor does it enforce the principles of decentralization.

The 2008 Law was amended seven times before it was revoked and replaced by the 2017 Law on Spatial Planning and Construction. Five of these changes were substantial, while the remaining two referred to minor technical corrections. Adopted during in the 2010–2014 period, these amendments often reinforced the centralization of certain aspects of spatial development—a process which culminated with the adoption of the new Law of 2017. The first set of amendments came with the adoption of the Law on Improving the Business Environment (Parliament of Montenegro 2010) and introduced several minor changes regarding the process of compensating municipalities for utilities provision on construction land. The second set of amendments was introduced the following year (Parliament of Montenegro 2011a), focusing on streamlining the procedure of issuing building permits and broadening the state government's authority in this area. The third set of amendments came before the end of the year, through the Law on Amendments to the Law prescribing fines for misdemeanours (Parliament of Montenegro 2011b); this change resulted in lowering the minimal amounts of fines for violations against the Law on Spatial Planning and Construction. The fourth set of amendments (Parliament of Montenegro 2013) provided more space for private investors to initiate and finance the creation of new spatial plans and propose changes to the existing ones. New discounts in municipal fees for utilities provision on construction land were also introduced. With the final amendments to the Law of 2008 (Parliament of Montenegro 2014), the central register of planning documents was established and put under the purview of the state government, i.e. the Ministry. The cumulative result of these frequent changes was a more centralized process of

spatial planning-related decision making, primarily oriented towards eliminating regulations perceived as business barriers.

The issue of building permits is a good example of how these sets of amendments gradually changed an important aspect of spatial planning, moving the decision-making powers from the local to the state level. According to the Law of 2008, the local government was in charge of issuing building permits for the projects constructed in accordance with the local-level planning document, while the central government issues permit for the projects in accordance with the central-level planning documents. The exceptions where the state government takes the authority of issuing the building permits away from the municipal level were few, according to the Law of 2008, and included complex constructions such as industrial and infrastructural projects, stadiums with capacity for more than 3000 people, and hotels with a surface area of more than 3000 m^2. However, this list of exceptions was expanded significantly with the 2011 amendments, which gave the central government the authority to issue building permits for all "state projects of public interest", which are defined by the Law of 2008 as, for example, production systems that employ more than 300 workers, five-star hotels with at least 120 rooms, and education, science, health, culture and social service buildings (Article 7). In addition to this, the amendments of 2011 gave the central government broader authority over the construction of smaller hotels, bringing all of those with a surface area of more than 1000 m^2 under the Ministry's purview. This trend continued with the amendments of 2013 (Article 1), which expanded the definition of "state projects of public interest" to include facilities for the production of electricity from renewable sources, production systems that employ at least 50 workers, and almost all types of hotels and tourist resorts, including small and boutique hotels. Finally, the amendments of 2014 (Article 8) gave the central government the authority to issue building permits for objects which are part of the "spatial and functional whole" with "state projects of public interest".

The issuing of building permits is based on the local and state planning documents, which prescribe the planning and technical conditions for construction and which are adopted at the local or central level, according to the above described procedures. However, the granting of a building permit is never guaranteed, as it depends on the interpretation of the plans and conditions. Therefore, it is important if the local or the central authority is in charge of this process: whoever decides which building permits are approved and under what conditions, makes their own interpretation of the planning document official and permanent. If the decisions on building permits for structures which might have great significance for the future and direction of local development (e.g. mini hydropower plant, new hotel, etc.) are removed from the local level, the instruments of self-governance at the municipal level might be jeopardized.

The gradual changes in the Law of 2008 limited local governments' power by transferring some of their authority to the central level, but also by introducing business incentives with a potential to hurt local budgets. The 2013 amendment declared that the investors who finance the "state projects of public interest" are exempt from paying the municipal fees for utilities provision on construction land.

The possible extent of this measure is clear when put in the context of the fact that these fees accounted for 31–43% of total municipal budgets in the 2008–2012 period (The Union of Municipalities 2013). While the fact that the local budgets have been so reliant on the new construction projects is worrisome and indicative of the overreaching economic challenges of Montenegro, it is evident that with this decision, the expanding definition of "state projects of public interest" became, potentially, even more damaging for the local governments: the more of them are approved, the emptier the local budget is. At the same time, local governments were given the power to decide on lowering the fees for utilities provision on construction land or waiving them entirely, on a case-by-case basis, which however left even the wealthy coastal municipalities vulnerable to the pressures from the important outside investors (Luković 2018). This instrument was recognized as a potential corruptive mechanism and challenged before the Constitutional Court of Montenegro by the Network for Affirmation of the NGO Sector in 2016 (Dan 2018).

Finally, some of the ways in which the Law of 2008 was gradually changed reflect the attempt to counter the lack of funds and expertise at the local level by creating more space for businesses to act. While the Law of 2008 only allowed the development of an urban project (which is a local-level plan) to be financed by a private investor, the amendments of 2013 (Article 15) made it possible for private investors to finance the development of a detailed spatial plan and a state site study (central-level planning documents), as well as a detailed urban plan, an urban project, and a local site study (local-level planning documents). In their review of the implementation of the Law of 2008, The Union of Municipalities (2009, p. 7) requested that it should become possible for private investors to finance a local site study; here, this request was accepted and significantly expanded. Having in mind the fact that local governments have struggled to create and adopt planning documentation throughout the entire period of the Law of 2008 implementation, it may be assumed that the invitation for private funding to enter the process of spatial planning was envisioned as a way to help local governments finance spatial plans. It could also be understood as an effort to increase local efficiency, while also expanding the business opportunities for commercial planning bureaus, allowed to undertake the work of producing spatial plans by the Article 35 of the Law of 2008. The Union of Municipalities (2009, p. 6) warned about the difficulties caused in the local planning process by the lack of public planning agencies, but to no avail. Overall, the result of implementing the Law of 2008 and its subsequent amendments was the increased influence of private capital on spatial planning processes, the centralization of decision making, and the insufficient development of local planning capacities—which remains a constant problem of the Montenegrin spatial planning system.

7.3.2 The 2017 Law on Spatial Planning and Construction

Even though the series of amendments to the Law of 2008 have gradually made the spatial planning decision-making process more centralized, the centralization became official with the 2017 adoption of the new Law on Spatial Planning and Construction. The preparation of this legislation began in 2015, when the new law reached a form of draft, which was put through the public debate (Kapor 2017). The process continued away from the public eye for more than a year, resulting in a surprising legislative proposal for a new, centralized spatial planning system. The public pressure to continue debating this issue prevailed, and another round of a highly engaging public deliberation followed. The proposal was sharply criticized by the municipal governments, political parties, civil society organizations, professional chambers, and concerned citizens, who all together contributed to the debate with more than 750 written comments and questions. The Ministry of Sustainable Development and Tourism, in charge of this process, accepted only a dozen of the technical suggestions, while those that challenged the new legislation were, for the most part, dismissed (Ministry of Sustainable Development and Tourism 2017). The proposal was passed into the Law on Spatial Planning and Construction (hereinafter: the Law of 2017) by the state Parliament on 30 September 2017.

Some of the most pronounced stated objectives of the Law of 2017 are to provide regionally balanced spatial development and efficient use and protection of spatial resources, and to encourage investment activity in a way which benefits both spatial and economic development (Article 2). The Law is rooted in a set of ten principles, among which are an integrated approach to the planning process, sustainable spatial development and quality of planning and construction, and horizontal and vertical integration in spatial planning (Article 3). However, the Law of 2017 pulled away from the notion of decentralization. The new legislation abandoned the traditional classification and hierarchy of local- and central-level spatial plans and introduced the spatial plan of Montenegro and the general regulatory plan as the only two planning documents, through which the entire Montenegrin territory should be planned and regulated. According to this Law, the spatial plan of Montenegro is a strategic document, adopted for a period of 20 years, which provides the basis for spatial planning and prescribes the guidelines for the development of the general regulatory plan (Article 16). The general regulatory plan, adopted for a period of 10 years, is a detailed planning document which contains the goals and measures of spatial and urban development of Montenegro and covers the entire territory of the state, including protected areas (Article 17). Both documents are created by the central government and adopted by the state parliament, in a process described in Fig. 7.2. Besides the local and state governments, parliaments, and the public (whose roles have significantly changed, as is evident when compared with those defined by the Law of 2008), the Law of 2017 introduced two new actors into the procedure of spatial planning: the Authority for Technical Requirements (Article 5), which can be an institution (local or national)

or a company (public or private) in charge of a certain infrastructural element (e.g. road construction and maintenance, water supply, Internet provision), and the Revision Council (Article 30), which is appointed by the state government, in charge of revising the drafts of planning documents, and composed of experts in spatial planning with at least 15 years of experience. To secure the involvement of the local municipalities, the Council is required to have a representative of a local government whose territory is being planned in a document under revision. Apart from this representative, local governments are also represented in a team of experts formed by the Ministry and tasked with developing the planning document.

As Fig. 7.2 shows, the Law of 2017 has substantially limited the ways in which local governments can influence the planning process. Instead of leading the procedures of adopting the local-level plans, local governments are now effectively only observing the process with the right to comment, but with no right to consent to the planning document in question. New legislation has not provided the municipal authorities with a clear procedure which could be used to block a decision on spatial planning made by the state government. Additionally, the local government's approval is not necessary for the proposed planning document to be adopted by the state parliament, while the approval of the Authority for Technical Requirements is. Therefore, the Law of 2017 clearly puts the technical aspects of the spatial planning before the political ones.

It is not surprising that the local governments fought vigorously against adopting such legislation. The Report on Public Debate on the Draft Law on Spatial Planning and Construction (Ministry of Sustainable Development and Tourism 2017, p. 6) shows that the Union of Municipalities criticized the "trend of centralization" the Law was promoting and referred to the stipulations of the Constitution of Montenegro (Parliament of Montenegro 2007) and the European Charter of Local Self-Government (Council of Europe 1985), which promote broad rights for municipal governments and decentralization of power. For the coastal municipality of Tivat, the proposed legislation was "absolutely unacceptable"; in their comment, the local authorities criticized the results of the centralized spatial planning that they had already experienced, after parts of the municipal territory became subject to the central coastal area regulation in 2009. They note how the Ministry began issuing the building permits in areas where construction was never allowed before, and that now the space is devastated to the point where the beaches are disappearing, that new buildings have completely blocked the access to the sea, that tourists are leaving, and that the residents who used to make a living by renting accommodation during the summer season are now trying to sell their property. In their comment, the Tivat municipality insists that these are issues of great importance, which cause huge losses that need to be addressed (Ministry of Sustainable Development and Tourism 2017, p. 25).

The capital city of Podgorica also criticized the proposed legislation, noting how regulations leave a possibility for all the new plans and by-laws to be of a good quality, but definitely do not guarantee such an outcome (Ibid, p. 40), therefore anticipating that the space for excluding the local authorities from the planning process, which has been opened up by the proposed Law, might indeed be used by

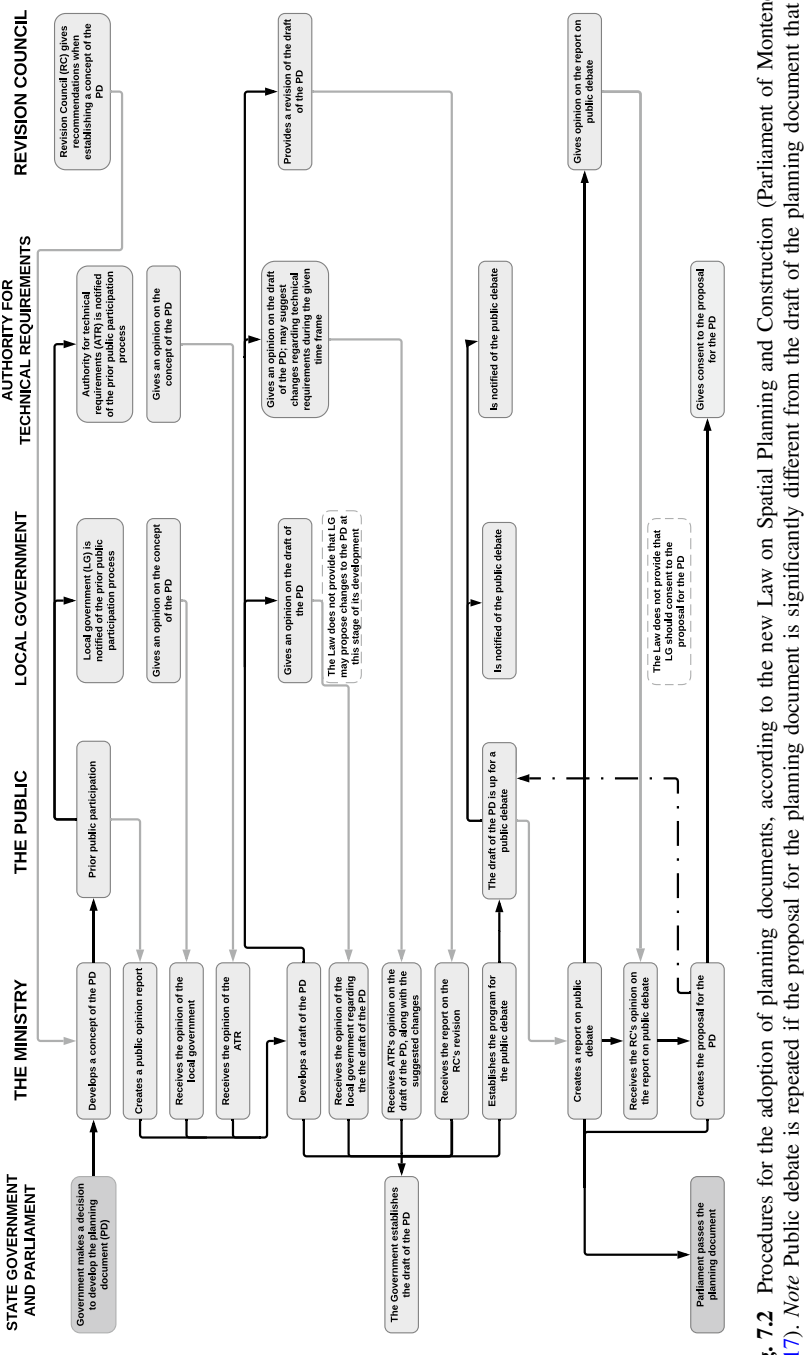

Fig. 7.2 Procedures for the adoption of planning documents, according to the new Law on Spatial Planning and Construction (Parliament of Montenegro 2017). *Note* Public debate is repeated if the proposal for the planning document is significantly different from the draft of the planning document that was originally put up for public debate.
Source Author's own elaboration, based on Dragović (2018)

the central government to circumvent local actors and to impose ready-made solutions from above. The Ministry responded to these concerns by claiming that the constitutional rights of the municipalities to self-govern are always confined within the legal framework of the state, and that, by adopting the Law of 2017, the state has only been changing this legal framework, and not imposing limitations to the municipal self-governance (Dragović 2018, p. 72). The Ministry also referred to a newly introduced process of "Prior public participation" (Article 27) envisioned as an instrument for encouraging public participation in the early stages of the planning process. However, although the Law of 2017 did provide this innovation, it did not in any way ensure or guarantee its effectiveness in shaping the spatial plans from the bottom up.

In addition to changing the spatial planning process, the Law of 2017 altered several other aspects of spatial development, the following being the most important among them: the building permits were abandoned as an instrument of controlling construction process and replaced by a notification of the start of construction presented to the Ministry (Article 91), urban and construction inspection was centralized under the Ministry (Article 197), the roles of Chief State Architect and Chief City Architect were introduced (Articles 87 and 88), and the process of legalizing illegally constructed buildings was brought into the sphere of spatial planning and included, for the first time, into the legislation regulating spatial development (Article 1). These changes caused a great degree of turmoil in all areas of spatial regulation and development, the results of which are still difficult to fully comprehend. The situation is further complicated by the fact that the Law of 2017 kept some provisions of the Law of 2008 in effect until the adoption of the general regulatory plan, which was scheduled to be adopted no later than 36 months after the Law of 2017 goes into effect.

Since its adoption, the Law of 2017 has been amended four times: once with a technical correction, three times with substantial changes to regulations. Two sets of amendments adopted in 2018 referred mostly to the extension of a deadline for the adoption of planning documents in accordance with the Law of 2008. Originally, the Law of 2017 allowed a period of nine months (i.e. until July 2018) for all the local- and state-level spatial plans, which had been in the process of development under the previous law, to be adopted and to come into force (Article 217). If adopted within the given timeframe, these plans would be valid until the adoption of the general regulatory plan; if not, the adoption procedure would be terminated and the new plan would have to be developed according to the Law of 2017 provisions—that is, within the general regulatory plan framework. State government used this short timeframe to encourage the adoption of spatial plans, some of which had already been in the process for years, while local municipalities were very interested in using this opportunity to adopt some of the local planning documents in accordance with the old procedures, which granted them more autonomy. When the nine-month period provided by the Law of 2017 proved to be insufficient, the Law was amended and the deadline was extended twice, within two different sets of amendments—the first until the beginning of October 2018 (Parliament of Montenegro 2018a), and then, until the end of December 2018 (Parliament of

Montenegro 2018b). These frequent changes and the constant shifting of, apparently, arbitrary deadlines contributed towards the perception of the new legislation as unstable and unreliable, thereby undermining the extensive reform the Law of 2017 was trying to establish even further.

The most recent set of amendments to the Law of 2017 was adopted in July of 2020, bringing an array of changes organized in as many as 100 articles (Parliament of Montenegro 2020). The main motive for amending the law was the ruling of the Constitutional Court (2019), which deemed one of its provisions unconstitutional; specifically, the 2013 amendment to the Law of 2008, which was kept in effect by the new law, and which gave local municipalities discretionary rights to exempt an investor from paying some of the municipal fees for utilities provision. The amendments of 2020 brought this regulation in line with the ruling and introduced, among other measures, business zone exemption from paying for utility provision on construction land (Article 97). With this, the trend of legislating spatial development to ease the regulations related to business development was continued.

Another crucial change adopted in this set of amendments refers to the 24-month extension of the timeframe within which the general regulatory plan should be adopted, to a total of 60 months from when the Law of 2017 was first adopted (Article 85, Amendments 2020). This means that, instead of coming into force in 2020, the updated detailed planning documentation for the entire territory of Montenegro will not be adopted until (at least) late 2022, with the possibility of the deadline being pushed even further, as was the case many times in the past. The delay in adopting the general regulatory plan creates an impediment for the entire process of spatial development, which is now subject to a series of transitional provisions based on the expanding authority of the state government. For instance, the newly adopted Article 218a gives the state government the authority to allow construction in locations which are presently not covered by the valid detailed planning documentation. This provision, which is set to last until the adoption of the general regulatory plan—which might be prolonged even further than 2022—effectively divorces the construction process from the process of spatial planning. By making it possible for these important decisions to be made ad hoc, on a case-by-case basis, and outside of the framework of a carefully crafted detailed spatial plan, it could cause lasting damage to the overall spatial development of Montenegro.

7.4 Main Implementation Challenges

The numerous and frequent changes in the laws regulating spatial development have produced difficulties in implementing this legislation. The Law of 2008 did not uphold its proclaimed principles of encouraging polycentricity and decentralization: the gradual strengthening of the government's authority at the expense of local municipalities, promoted through the series of 2010–2014 amendments, did not create conditions for the long-term improvement of the planning system. The lack of local planning documentation, poor implementation of the existing plans,

and insufficient planning capacities at the municipal level continued to burden local development efforts in the period following the adoption of the Law of 2008, as noted by Doderović and Ivanović (2012). The state government responded by taking over some of the municipal responsibilities and by enabling private businesses to play a more active role in the planning process, while contributing less to the municipal budgets. These actions contributed to the weakened position of local governments in all matters related to the spatial development decision making.

The Law of 2017 set out to solve the problem of the inadequate municipal capacities by formally centralizing the planning process, but failed to take into account how complicated the implementation of such transition may be. By eliminating the deeply rooted classification and hierarchy of local- and state-level spatial plans, the Law of 2017 discontinued the established framework of developing spatial planning documents—a framework that relied on the process with long tradition and well-versed experts. The old planning process was abandoned, while the new one was to come into force with a delayed start: planning documents outlined by the Law of 2017 were to be adopted only several years after this legislation was introduced. In the meantime, for the duration of the period of transition between the two systems, the old plans would still be in use, and they could even be altered and renewed in accordance with the new law. This complex combination of the old plans and new regulations left the public disoriented and confused, and contributed to the atmosphere of uncertainty and instability in spatial planning, evident in the reactions of local governments, professional associations, independent experts, journalists, and political parties (Centre for Investigative Journalism of Montenegro 2018). In the period following the adoption of the Law of 2017, the situation has not become much clearer: local development is often based on dated local-level plans, inadequate for the contemporary challenges of urban development, while the new procedures have yet to fully come into force. This results in construction projects of dubious legality and quality, and inspires critical civic action (Vijesti 2020). When the amendments of 2020 prolonged the transitional period until the late 2022, it became conceivable that the present state might turn into a slow long-term adjustment, with no guarantees for its overall impact on the spatial, social, and economic development of Montenegro.

7.5 Centralization of Spatial and Urban Planning: A Short-Lived Experiment or a Long-Term Solution?

The last decade of spatial planning in Montenegro has shown how challenging it is to develop a stable and functional system of spatial governance, even when the territory in question is small in size and has a well-established tradition of spatial planning. The often-contradictory spatial demands of a largely tourism-based economy (i.e. the demand for ever-expanding development of short-term accommodation versus the protection of the environment) have increased the pressure to

speed up the planning process, at the expense of a careful and thorough construction of a resilient, integrated and inclusive planning system. However, there are no guarantees that the system which is currently being developed will last—or that, indeed, it should last.

Three years after the Law of 2017 and the reform it introduced came into force, the spatial development processes are slow, inefficient, and often confusing. While the creation of important planning documentation is delayed, there is also not much progress in other areas regulated by the Law of 2017—areas such as building construction, urban and construction inspection, and legalization of illegally built structures. The elimination of building permits led to weakened systemic control mechanisms, while the centralization of urban and construction inspection left this service understaffed (Standard 2018). The legalization of the existing structures built without a permit and inconsistent with the valid spatial plans, a process long-overdue (see: Potsiou 2012) and reinvigorated by the introduction of the new legislation, has also uncovered systemic shortcomings: of an estimated 100,000 illegally built objects in Montenegro, around 51,000 applications for legalization were submitted by the summer of 2020; around 65% of the received applications were processed, but only 734 of those structures (1.4% of all the applications) were legalized (Dan 2020). The amendments were introduced in 2020 to improve the process, but the very low success rate from the first phase of the implementation remains worrisome and indicative of the government's unpreparedness for the extensive spatial planning reform it introduced in 2017.

The National Sustainable Development Strategy until 2030 lists the strengthening of local governments' capacities to prepare, develop, and implement spatial planning documents as one of the measures for achieving sustainable spatial development in Montenegro (Ministry of Sustainable Development and Tourism 2016b, p. 308). The 2017 reform of spatial planning legislation has, however, rendered this measure unavailable. For the last three years, local capacities for envisioning and administrating spatial development have continued to stagnate, while the state government's capacities have become overburdened and less efficient. It might be fair to say that, until now, the chief achievement of the Law of 2017 was to highlight the flaws of the system currently in place, impairing the autonomy of the decentralized system as well as the efficiency of the centralized one. To overcome the current problems and support the development of a more robust system of territorial governance and spatial development, the current legislation needs to evolve into a framework which truly supports local self-governance and encourages regional-level cooperation in spatial planning, which might hold great potential, but was given little to no attention during the last decade.

7.6 Conclusion

The centralizing trend in the Montenegrin policy of spatial development has so far not produced the desired results, especially in terms of increased quality of planning and balanced regional development. According to the Report on the Implementation of the Regional Development Strategy Action Plan (Ministry of Economy 2020), in 2019, 353 million euros was invested in the northern region; however, during the same period, only 780 people have been newly employed in this part of Montenegro (compared to the total of 9586 newly employed in the entire country over the same period of time). This is not to imply the causal relation between the centralized policy of territorial governance and the poor economic performance of the Montenegrin north. However, the fact that the northern region accounted for only 8% of all job creation in 2019 is illustrative of the persistent discrepancy in regional development, which will only be exasperated by the effects of the ongoing COVID-19 pandemic. It invites further exploration of the effects that the current policy of spatial governance has on the overall economic and social development.

The current policy framework of the spatial development in Montenegro lacks the efficient mechanisms of local-level participation and control, while the regional dimension of spatial management and planning remains an entirely undeveloped potential. By shifting the focus away from centralizing the processes of territorial governance and towards supporting, building, and integrating the local and regional systems, a vast space for the improvement of the current framework emerges. If the responsibilities and the opportunities for spatial development are more evenly distributed across the local, regional, and central levels of government, it might become easier to achieve high-quality, inclusive, and democratic decision making regarding spatial development. If, however, the policy of spatial development continues its current course, the centre might not be able to hold and cope with the burden of the rapidly accumulating negative effects.

References

Berisha E (2018) The evolution of spatial planning systems in the Western Balkan Region. Be-tween inter-national influences and domestic actors [PhD Thesis: Politecnico di Torino]. Por-to Iris Archivio Istituzionale della Ricerca. http://hdl.handle.net/11583/2707105

Berisha E, Colic N, Cotella G, Nedovic Budic Z (2018) Mind the gap: Spatial Planning Systems in the Western Balkan Region. Trans Assoc Eur Sch Plan 2:47–62. https://doi.org/10.24306/traesop.2018.01.004

Berisha E, Cotella G, Janin Rivolin U, Solly A (2020) Spatial governance and planning systems and the public control of spatial development: a European typology. Eur Plan Stud 29:1–20. https://doi.org/10.1080/09654313.2020.1726295

Berisha E, Cotella G (in this volume) Territorial development and governance in the Western Balkans. In: Berisha E, Cotella G, Solly A (eds) Governing Territorial Development in the Western Balkans–Challenges and Prospects of Regional Cooperation. Springer, New York, pp 23–42

Berisha E, Cotella G, Solly A (in this volume) Introduction. The Western Balkans between continuity and change. In: Berisha E, Cotella G, Solly A (eds) Governing Territorial Development in the Western Balkans—Challenges and Prospects of Regional Cooperation. Springer, New York, pp 1–19

Centre for Civic Education (2014) Urbanizam u Crnoj Gori: Gradnja i ugradnja? [Urbanism in Montenegro: Construction and Corruption?]. Podgorica, Montenegro. Retrieved from http://media.cgo-cce.org/2016/11/Urbanizam-gradnja-i-ugradnja.pdf

Centre for Investigative Journalism of Montenegro (2018) Sva moć je na jednom mjestu: Zakon o planiranju prostora i izgradnji objekata, analiza [All the Power is in One Place: Analysis of the Law on Spatial Planning and Construction]. Retrieved from http://www.cin-cg.me/wp-content/uploads/2018/10/CIN-Publikacija-prostorno-planiranje-final.pdf

Constitutional Court of Montenegro (2019) Rješenje Ustavnog suda U-I br. 13/16 [The Decision U–I br.13/16]. Retrieved from http://www.ustavnisud.me/ustavnisud/skladiste/blog_4/objava_173/fajlovi/U_I%20br%2013_16.pdf

Cotella G, Berisha E (2016) Changing institutional framework for spatial planning in the Western Balkan Region. Evidences from Albania, Bosnia Herzegovina and Croatia. EUROPA XXI 30:41–57. https://doi.org/10.7163/Eu21.2016.30.3

Council of Europe (1985) European Charter of Local Self-Government. Strasbourg, France

Dan (2018, November 6). Samovoljno opraštali milionske komunalije [They Arbitrarily Forgave Millions in Utilities]. Retrieved from https://www.dan.co.me/?nivo=3&datum=2018-11-07&rubrika=Drustvo&najdatum=2018-11-06&clanak=670114&naslov=Samovoljno%20opra%B9tali%20milionske%20komunalije

Dan (2020, June 6). Pred izbore spremili novi plan legalizacije [They Prepared a New Plan for Legalization Before the Elections]. Retrieved from https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=747017&najdatum=2020-06-06&datum=2020-06-07

Doderović M, Ivanović Z (2012) Uvođenje reda u prostor Crne Gore [Introducing Order to the Montenegrin Space]. Matica 13(49):101–120. Retrieved from http://www.maticacrnogorska.me/files/49/04%20ivanovic,%20doderovic.pdf

Doderović M, Ivanović Z (2013) Prostorni plan Crne Gore [Spatial Plan of Montenegro]. Matica 14(54):505–530. Retrieved from http://www.maticacrnogorska.me/files/54/21%20m.%20doderovic,%20z.%20ivanovic.pdf

Dragović S (2018) When Government Takes All the Space: Centralization of Urban Planning in Montenegro. In: Proceedings of the Third International Conference of Young Urban Researchers, vol VII, 65–77, Lisbon, June 18–22

Ivanović Z (1979) Razvoj nekih urbanih naselja u SR Crnoj Gori [Development of Some Urban Settlements in Montenegro]. Geogr Slov 10:85–91

Kapor G (2017, April 19) Radulović: Zaustavićemo haos u urbanizmu [Radulović: We Will Stop the Chaos in Urbanism]. Retrieved from http://www.vijesti.me/vijesti/radulovic-zaustavicemo-haos-u-urbanizmu-934321

Luković S (2018, January 16) Opraštaju Portu 5,6 miliona eura [They Forgave 5.6 million euros of debt to Porto]. Retrieved from https://www.vijesti.me/vijesti/ekonomija/47554/oprastaju-portu-5-6-miliona-eura

Ministry of Economy (2020) Izvještaj o realizaciji akcionog plana Strategije regionalnog razvoja Crne Gore 2014–2020 za 2019. godinu [Report on the Implementation of the Montenegrin Regional Development Strategy Action Plan 2014-2020 for the year 2019]. Retrieved from https://www.gov.me/ResourceManager/FileDownload.aspx?rId=417607&rType=2

Ministry of Sustainable Development and Tourism (2016a) Najava: Konferencija povodom završetka LAMP projekta [Announcement: Conference on the Completion of the LAMP Project]. Retrieved from https://www.gov.me/naslovna/vijesti-iz-ministarstava/158130/Najava-Konferencija-povodom-zavrsetka-LAMP-projekta-Projekat-zemljisne-administracije-i-upravljanja.html?alphabet=lat

Ministry of Sustainable Development and Tourism (2016b) Nacionalna strategija održivog razvoja do 2030. godine [The National Sustainable Development Strategy until 2030]. Podgorica, Montenegro

Ministry of Sustainable Development and Tourism (2017) Izvještaj o javnoj raspravi o Nacrtu zakona o planiranju i izgradnji [Report on Public Debate on the Draft Law on Spatial Planning and Construction]. Retrieved from: http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rId=285508&rType=2

Nedović-Budić Z, Cavrić B (2006) Waves of planning: a framework for studying the evolution of planning systems and empirical insights from Serbia and Montenegro. Plan Perspect 21 (4):393–425. https://doi.org/10.1080/02665430600892146

Parliament of Montenegro (1995) Zakon o planiranju i uređenju prostora [The Law on Spatial Planning and Development]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2005) Zakon o planiranju i uređenju prostora [The Law on Spatial Planning and Development]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2007) Ustav Crne Gore [The Constitution of Montenegro]. Retrieved from: http://www.skupstina.me/index.php/en/ustav-crne-gore

Parliament of Montenegro (2008) Zakon o uređenju prostora i izgradnji objekata [The Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2010) Zakon o unapređenju poslovnog ambijenta [The Law on Improving the Business Environment]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2011a) Zakon o izmjenama i dopunama Zakona o uređenju prostora i izgradnji objekata [The Law on Amendments to the Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2011b) Zakon o izmjenama i dopunama Zakona kojima su propisane novcane kazne za prekrsaje [Law on Amendments to the Law Prescribing Fines for Misdemeanours]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2013) Zakon o izmjenama i dopunama Zakona o uređenju prostora i izgradnji objekata [The Law on Amendments to the Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2014) Zakon o izmjenama i dopunama Zakona o uređenju prostora i izgradnji objekata [The Law on Amendments to the Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2017) Zakon o planiranju prostora i izgradnji objekata [The Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2018a) The Law on Amendments to the Law on Spatial Planning and Construction. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2018b) Zakon o izmjenama i dopunama Zakona o planiranju prostora i izgradnji objekata [The Law on Amendments to the Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Parliament of Montenegro (2020) Zakon o izmjenama i dopunama Zakona o planiranju prostora i izgradnji objekata [The Law on Amendments to the Law on Spatial Planning and Construction]. Official Gazette of Montenegro, Podgorica, Montenegro

Potsiou C (2012) Study on Illegally Built Objects and Illegal Development in Montenegro. Retrieved from http://www.satref.no/globalassets/om-kartverket/centre-for-property-rights/final-report-chryssy.pdf

Standard (2018, April 4) Biće posla za još ljudi: Imamo 23 inspektora a treba nam ih 70 [There Will be Work for More People: We Have 23 Inspectors, but we Need 70 of Them]. Retrieved from https://www.standard.co.me/ekonomija/bice-posla-za-jos-ljudi-imamo-23-inspektora-a-treba-nam-ih-70/

The Union of Municipalities, Commission for Spatial Planning and Utilities (2009) Pregled problema u primjeni Zakona o uređenju prostora i izgradnji objekata [Overview of Problems in the Implementation of the Law on Spatial Planning and Construction]. Podgorica, Montenegro. Retrieved from http://uom.me/wp-content/uploads/2010/05/Pregled-problema-u-primjeni-Zakona-o-uredjenju-prostora-i-izgradnji-objekata.pdf

The Union of Municipalities, Commission for Local Government Financing (2013) Analiza stanja finansiranja lokalnih samouprava [Analysis of the Situation in Local Government Financing]. Podgorica, Montenegro. Retrieved from http://uom.me/wp-content/uploads/2013/06/analiza-stanja-finansiranja-lokalnih-samouprava1.pdf

The World Bank (2008) Project Information Document: Land Administration and Management Project. Washington, D.C. Retrieved from http://documents1.worldbank.org/curated/en/569981468122682218/pdf/PID010Appraisal0Stage.pdf

Tošić B, Živanović Z (2019) Comparative analysis of spatial planning systems and policies: Case study of Montenegro, Republic of North Macedonia and Republic of Serbia. Zbornik radova—Geografski fakultet Univerziteta u Beogradu 2019(67–2):5–19. https://doi.org/10.5937/zrgfub1902005T

Vijesti (2020, August 12) KANA: DUP "Zabjelo-Ljubović" što prije povući [KANA: Detailed urban plan "Zabjelo-Ljubović" should be urgently withdrawn]. Retrieved from https://www.vijesti.me/vijesti/drustvo/459665/kana-dup-zabjelo-ljubovic-sto-prije-povuci