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DOI: 10.2478/seeur-2025-0032

ILLEGAL CONSTRUCTION AS A CRIMINAL OFFENSE IN THE REPUBLIC OF NORTH MACEDONIA: LEGAL ANALYSIS

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ABSTRACT

Illegal construction, as defined by the Criminal Code of the Republic of North Macedonia, is classified as a criminal offense under the chapter on Criminal Offenses against Property. Every municipality in North Macedonia faces challenges related to illegal construction. These constructions cause significant financial, urban, and environmental harm—impacting not only the state and municipal budgets but also citizens indirectly.

The Municipality of Gostivar, one of the largest urban municipalities in the country, is particularly affected, with over 15,000 cases filed to legalize structures built without proper permits. These unauthorized buildings often lead to financial loss, urban disorder, and environmental degradation due to construction on unsuitable land—such as areas designated for green space or near rivers—without any planning for infrastructure, water supply, or sewage systems.

This paper employs both quantitative and qualitative research methods to explore this issue in depth. Factors such as impunity, the enactment of the Law on Treatment of Illegally Constructed Buildings, weak institutional enforcement, inadequate municipal capacity, and corruption across municipal administrations, police, prosecution, and judiciary have collectively fostered a climate where unauthorized construction flourishes.

Ultimately, the Criminal Code must be enforced rigorously. If enforcement proves impractical, decriminalizing the offense and introducing strict financial penalties for illegal construction may be an alternative approach.

Key words: Criminal offense, unauthorized construction, financial damage, crime.

GENERAL OVERVIEW OF THE CRIMINAL OFFENSE OF ILLEGAL CONSTRUCTION

Illegal construction is a widespread and persistent issue across all municipalities in the Republic of North Macedonia. The large number of requests submitted to legalize buildings constructed without permits is clear evidence of the magnitude of this problem.

This paper aims to investigate the role of municipalities in addressing illegal construction, assess whether investors are aware that they are committing a criminal offense, and demonstrate how such construction undermines municipal functionality, damages public finances, and causes urban and ecological harm.

One of the key contributing factors is corruption—both within local government units and among administrative officials, prosecutors, and judges. These systemic issues result in a high incidence of this offense, which often goes unpunished. Without effective coordination between municipalities, the police, and prosecutors, illegal construction cannot be properly identified, prosecuted, or sanctioned. Financial damages reduce municipal effectiveness, while urban and environmental degradation affects the overall quality of life for all citizens.

Illegal construction frequently arises from the inefficiency of municipal or state construction inspectors, the absence of urban development plans, and shortcomings within the municipal departments responsible for preparing such plans. These failings are often the basis for the offense itself.

In the Municipality of Gostivar, illegal construction is primarily the result of weak inspection oversight and the lack of urban planning—particularly in rural areas. The main responsibility for detecting such construction lies with municipal construction inspectors, whether acting *ex officio* or upon citizens' reports. When inspectors fail to act, the number of violations increases, resulting in significant financial, urban, and environmental damage. Moreover, the absence of urban plans, especially in rural zones, perpetuates these issues.

This study seeks to offer solutions for addressing illegal construction as a criminal offense. Using both qualitative and quantitative methods, it examines the contributing factors, profiles of offenders, the risks involved, and related legal complexities.

A significant complicating factor is the Law on the Treatment of Buildings Constructed Without Permits. This law allows, with certain exceptions, the legalization of unpermitted buildings, which can then be recorded in the Cadaster Agency and brought into the legal system.

This raises an important question: does the Law on Legalization undermine the offense of illegal construction as defined by the Criminal Code? A legal contradiction appears to exist—on one hand, the Criminal Code defines unauthorized construction as a punishable offense, while on the other, legislation allows for the retroactive legalization of such structures. The purpose of this study is to clarify these legal ambiguities and provide a comprehensive understanding of the offense of illegal construction.

The damage caused by illegal construction—financial, urban, and environmental—is substantial. These offenses undermine the functionality of municipalities and negatively impact citizens' lives.

In the Municipality of Gostivar, following the adoption and implementation of the Law on Legalization on March 3, 2011, and its amendments until the final deadline of December 31, 2018, a total of 15,915 legalization requests were submitted. The financial impact is evident: under the Law on Legalization, the fee for legalizing a structure is 61 denars (approximately 1 euro), whereas under the Construction Law, obtaining a construction permit requires a municipal fee determined by the construction area—usually significantly more than 1 euro. This discrepancy has led to a substantial loss of municipal revenue. Since municipal

infrastructure development relies on these fees, the special status of the legalization law has disrupted normal financial flows, further undermining municipal capacity. The resulting urban chaos and environmental degradation continue to affect all residents.

MEANING OF THE CRIMINAL OFFENSE: ILLEGAL CONSTRUCTION

Under the Criminal Code of the Republic of North Macedonia, illegal construction is categorized as a criminal offense against property. Specifically, Article 244 outlines the legal provisions regarding this offense:

"(1) Whoever builds, carries out construction, or supervises construction on their own land or on land belonging to others without a construction permit or in contradiction to an issued permit by the competent authority shall be punished with imprisonment of three to eight years.

(2) If the offense under paragraph (1) is committed for the purpose of sale, the offender shall be punished with imprisonment of no less than four years.

(3) The punishment in paragraph (2) also applies to anyone who undertakes construction contrary to the approved project or who reconstructs structural elements of the building without a basic project, thereby compromising mechanical resistance, stability, or seismic protection.

(4) An official person from local government or state administration responsible for spatial regulation who approves a location permit in violation of the current urban plan, or issues a construction permit contrary to the location permit, and thereby causes illegal material gain or damages another party, shall be sentenced to imprisonment of three to eight years.

(5) If the offense is committed by a legal entity, a monetary fine shall be imposed.

(6) Structures built in violation shall be subject to confiscation." (Criminal Code of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/20, pp. article 244-a)

The *legal figure*—that is, the legally defined structure of the offense—is what distinguishes this crime from other types of criminal behavior. According to Article 244-a of the Criminal Code, the specific circumstances under which the offense is committed determine the applicable sanction.

Penalties for illegal construction include both imprisonment and fines. Offenders may be private individuals or legal entities, domestic or foreign. Private individuals may be either officials from competent bodies or investors. If the offense involves abuse of official position, the offender may also be charged with *Abuse of Official Position and Authority* under the Criminal Code. (Criminal Code of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/20)

CONSTRUCTIONS WITH CONSTRUCTION PERMITS

Applying For a Building Permit

Every construction project must fulfill essential legal requirements, regardless of its purpose. These include ensuring mechanical and seismic stability, environmental protection, and safe and accessible usage. These standards are clearly defined in the Law on Construction. (Construction law ("Official Gazette of the Republic of Macedonia",,. 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/2013, 79/2013, 137/2013, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, 44/2015, 129/2015, 217/201)

Municipalities are legally obligated to develop a General Urban Plan (GUP) and a Detailed Urban Plan (DUP), with the latter required to align with the general plan. Additionally, the Law on Spatial Planning mandates the creation of planning documents for rural areas, known as village plans (FPs). Administrative officers responsible for urban planning are required to ensure these plans serve both public and municipal interests.

In the Municipality of Gostivar, the territory is divided into various zones or construction blocks according to the GUP, with further details regulated by the DUP. A major cause of illegal construction stems from gaps in urban planning—especially in rural areas—where plans are outdated or nonexistent. This misalignment between citizens' construction interests and available urban plans leads many, particularly in villages, to build homes without permits. While some may be unaware that this constitutes a criminal offense, in most cases investors are informed, and either seek permits that the municipality cannot issue due to planning gaps or attempt to secure institutional protection.

It is not uncommon for municipal employees in the urbanism sector to engage in private, often corrupt, activities. In some cases, these officials mislead investors for personal gain, assuring them there will be no repercussions and that legalization under the Law on Legalization will eventually be possible.

The process of applying for a construction permit begins with the electronic submission of an application through the national e-Permit system, by the investor via an authorized, licensed representative registered with the Central Registry of North Macedonia. Both domestic and foreign private or legal entities may apply, provided they meet legal requirements. (Construction law ("Official Gazette of the Republic of Macedonia",,. 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/2013, 79/2013, 137/2013, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, 44/2015, 129/2015, 217/201)The Law on Construction stipulates which authority is competent to issue permits based on the nature of the project. Importantly, construction may only begin once the permit becomes legally effective—that is, once the appeal period has expired and the municipal construction fee has been fully paid.

Documents Required to Obtain a Building Permit

To obtain a building permit, the investor must submit the application electronically and attach all documentation required under the Law on Construction, including:

- An approved architectural-urban project (if the urban plan requires one), or an infrastructure project for linear construction;
- A basic construction project with a revision report or official recognition (if drafted abroad), along with a positive opinion regarding structural integrity and seismic safety;
- A concept design, if previously submitted and approved under Article 48 of the Law;
- Proof of the right to build on the land;

- Geodetic documentation confirming ownership of at least 90% of the construction parcel (with the remainder belonging to the state, if applicable).

Additional documentation may be required, depending on the type of construction, such as:

- Conservation permits;
- A declaration by the applicant;
- Authorization from relevant bodies for energy or electronic communication projects;
- Notification for data transmission;
- A traffic regulation decision from the Ministry of Interior.

In summary, depending on the project, supplementary documents required by law must also be submitted. (Construction law ("Official Gazette of the Republic of Macedonia",,, 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/2013, 79/2013, 137/2013, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, 44/2015, 129/2015, 217/201)

The e-Building Permit system automatically tracks the progress of each case. The assigned municipal administrative officer is responsible for ensuring legal compliance throughout the process, in accordance with the Law on Construction and the Law on General Administrative Procedure. Once all legal procedures are complete, the Mayor issues the construction permit.

Construction Supervision and Building Without a Permit

Once a construction permit becomes effective, the investor must begin construction within the legal timeframe. All construction activities are subject to supervision.

Supervision is carried out by the supervising engineer and authorized municipal inspectors, as defined in the Law on Construction (Articles 14–16). The supervising engineer, who must hold a valid supervision license, oversees construction on behalf of the investor but must not be employed by the contractor.

The administrative officer handling the building permit must send a copy of the permit to the inspection sector. Municipal construction inspectors are responsible for overseeing construction and taking legal action in case of violations.

The purpose of the plan certificate is to clarify the designated use of the construction parcel. However, unauthorized construction outside the scope of the permit is not uncommon. Such deviations invalidate the permit and qualify the structure as illegal. Construction inspectors must act accordingly: if violations are confirmed and not corrected, they must notify the urbanism sector to initiate procedures for permit revocation and demolition of the structure. (Construction law ("Official Gazette of the Republic of Macedonia",,, 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/2013, 79/2013, 137/2013, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, 44/2015, 129/2015, 217/201)

Suspension and Demolition of Illegal Construction

Municipal construction inspectors are empowered to suspend construction or order demolition in cases where legal violations are identified.

Construction must be halted if it endangers safety, is carried out without a valid license, is inconsistent with the permit, or if any other violations stipulated in the Law on Construction occur. Demolition is required when construction takes place without a permit, continues despite a termination decision, or is based on an invalid or nonexistent permit. (Construction law ("Official Gazette of the Republic of Macedonia",,, 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/2013, 79/2013, 137/2013, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, 44/2015, 129/2015, 217/201)

**PROCEDURE ACCORDING TO THE LAW ON OPERATION WITH OBJECTS BUILT WITHOUT PERMISSION (Law on Legalization)
Regulation of the Legal Status of Objects Built Without a Permit**

In an effort to address the widespread issue of illegal construction across North Macedonia, the legislature adopted the Law on Legalization in 2011. This law provides a legal framework for identifying, evaluating, and regulating the status of structures built without construction permits, provided they were erected prior to March 3, 2011. (Law on Operation with Illegally Constructed Objects ("Official Gazette of the Republic of Macedonia", no. 23/2011, 54/2011, 155/2012, 53/2013, 72/2013, 44/2014, 115/2014, 199/2014, 124/2015, 129/2015, 217/2015, 31/2016 and 190/2017)

The Law on Legalization defines the conditions, procedures, and sanctions related to these unauthorized constructions. According to its provisions, the person in possession of an illegally constructed object may submit a request to the municipality in which the object is located. The original deadline for submission was six months from the law's entry into force; however, this was extended twice through legal amendments. (Law on Operation with Illegally Constructed Objects ("Official Gazette of the Republic of Macedonia", no. 23/2011, 54/2011, 155/2012, 53/2013, 72/2013, 44/2014, 115/2014, 199/2014, 124/2015, 129/2015, 217/2015, 31/2016 and 190/2017)

Requests may be submitted by either private or legal persons who are citizens or entities of North Macedonia. Foreign individuals or legal entities may also apply, provided they meet the legal criteria for acquiring property ownership in North Macedonia under the Law on Property and Other Real Rights.

When multiple objects are involved, a separate procedure is conducted for each one. It is also possible for the applicant to change during the process, as long as the new applicant is a person or entity who has acquired legal rights over the object in question. The legal status of a structure is considered regulated when the final decision determining its legal status enters into force and the object is officially registered with the Agency for Real Estate Cadaster.

Documentation Required to Regulate the Legal Status of an Object Built Without a Permit

To initiate the process of legalizing an unauthorized structure, the applicant must submit the following documents:

- Proof of citizenship (certificate or copy of ID for domestic individuals, passport copy for foreigners);
- An extract from the Central Registry (for legal persons);
- Proof of connection to municipal infrastructure (e.g., utility bills for electricity, water), or, if unavailable, a notarized statement made under criminal and material liability declaring that the object was constructed prior to the law's entry into force;
- Geodetic surveys reflecting the actual state of the structure and accompanying property certificate. (Law on Operation with Illegally Constructed Objects ("Official Gazette of the Republic of Macedonia", no. 23/2011, 54/2011, 155/2012, 53/2013, 72/2013, 44/2014, 115/2014, 199/2014, 124/2015, 129/2015, 217/2015, 31/2016 and 190/2017)

In addition to the above, the applicant must also provide evidence of ownership or rights over the land on which the structure is built. In most practical cases, municipalities require legally valid documentation proving land ownership or usage rights.

The responsible administrative officer in the municipality is tasked with verifying whether the request is substantiated. If so, the procedure continues in accordance with the Law on

Legalization, and the Mayor subsequently issues a decision determining the legal status of the object.

If the application is incomplete or lacks necessary documentation, the administrative officer issues a formal conclusion identifying the deficiencies and grants a deadline for their correction. If the applicant fails to remedy the deficiencies, the Mayor issues a decision rejecting the request.

In all cases—whether the decision is to approve legalization, suspend the process, or deny the request—the applicant has the right to file a complaint with the competent state body responsible for spatial planning within 15 days of receiving the decision. (Law on Operation with Illegally Constructed Objects ("Official Gazette of the Republic of Macedonia", no. 23/2011, 54/2011, 155/2012, 53/2013, 72/2013, 44/2014, 115/2014, 199/2014, 124/2015, 129/2015, 217/2015, 31/2016 and 190/2017)

The legalization fee is set at 61 denars per square meter, or approximately 1 euro. This significantly reduced cost compared to standard construction permit fees creates substantial financial losses for municipalities. Additionally, these legalized structures often do not comply with urban planning or environmental regulations, thereby contributing to urban disorder and ecological harm.

LAW ON OPERATION WITH OBJECTS BUILT WITHOUT A PERMIT IN RELATION TO THE CRIMINAL OFFENSE OF ILLEGAL CONSTRUCTION

The criminal offense of illegal construction often reflects broader patterns associated with organized crime. In practice, it is frequently facilitated by systemic corruption involving municipal officials, the police, the prosecution, and the judiciary. When these institutions fail to enforce the law, they enable the conditions in which illegal construction can flourish—ultimately harming citizens and the public interest.

Primary responsibility for preventing illegal construction lies with municipal construction inspectors. Their failure to act—due to inefficiency, negligence, or corruption—creates space for illegal construction to proceed unchallenged. Furthermore, the police and prosecution often appear as passive accomplices by neglecting to investigate or prosecute such cases. In some situations, licensed surveyors (geodetic experts) are also complicit, manipulating the legalization process through falsified or misleading documentation in geodetic surveys.

Corruption can be defined as a relationship of mutual benefit. Typically, investors who wish to build without a permit first bribe construction inspectors in order to avoid oversight, and then proceed to commit the offense of illegal construction with the assurance of institutional protection. In rare cases when inspectors do initiate procedures for illegal construction, it is often a defensive measure taken only after the offense becomes too visible to ignore or when the inspectors seek to protect themselves from liability. Another critical factor is the generally weak prosecutorial response to this offense. In reality, very few individuals are held criminally accountable, which reinforces the perception of impunity and diminishes the deterrent effect of the law.

The Law on Legalization has further complicated the situation. While intended as a tool to regulate and formalize existing structures, in practice it has created legal and moral ambiguity. It allows investors and builders of unauthorized structures to legalize their buildings retroactively, effectively granting amnesty for a criminal offense and undermining the authority of the Criminal Code.

STATISTICAL DATA ON CONSTRUCTION PERMITS AND REGULATION OF LEGAL STATUS OF OBJECTS BUILT WITHOUT PERMITS IN THE MUNICIPALITY OF GOSTIVAR FOR 2022

According to internal records from the Municipality of Gostivar, the following statistical data reflect the situation regarding construction activities during the 2022 calendar year.

From **January 1 to December 31, 2022**, the municipality issued a total of **202 construction permits**. These permits covered a range of construction types, including infrastructure projects such as roads, water supply systems, sewerage networks, as well as residential buildings and collective housing complexes. (Internal evidence of the Municipality of Gostivar in Excel)

In the same period, the municipality also processed cases related to the **regulation of the legal status of objects built without permits**. According to the data:

- **150 objects** were successfully legalized, and
- Approximately **1,200 requests** for legalization were **rejected** by official decision. (Internal evidence of the Municipality of Gostivar in Excel)

These figures illustrate a significant disparity between the number of submitted requests and those approved for legalization. This gap suggests either a high incidence of non-compliance with legalization requirements or weaknesses in the applicants' documentation. It may also reflect the limitations of the municipal administration in processing a large volume of cases efficiently.

VICTIMS OF THE UNLAWFUL CONSTRUCTION OFFENSE

Urban disorder resulting from construction without proper permits primarily benefits what is often referred to as the “urban mafia”—networks of individuals and entities that profit from illegal building activities. In contrast, society at large suffers the consequences. Construction in unauthorized areas, without compliance with legal standards and planning requirements, undermines urban development and public welfare.

The Law on Operation with Illegally Constructed Objects was introduced with the intention of mitigating the damage caused by unauthorized constructions. However, in practice, its effectiveness has been limited. Despite the existence of positive laws that mirror European legal standards, North Macedonia continues to experience severe and growing consequences from illegal construction. These include harm to the natural environment—affecting humans, plants, and animals alike—and disruption to public infrastructure and communal spaces. A particularly damaging aspect of this phenomenon is the usurpation of public and green spaces. Illegal construction often encroaches upon areas designated for communal use or environmental protection, such as parks, playgrounds, or riverbanks.

There are numerous examples in practice where construction occurs even when urban plans are in place, but is carried out in violation of those plans. For instance, a site designated for a sports field may be used instead for a private residential house. Similarly, within collective residential buildings, developers often abuse the planning rules to increase residential space and maximize profits. When these violations are identified by construction inspectors, the outcome—despite the existence of valid permits—can be the annulment of the permit and classification of the structure as illegal. This leads to the legal requirement that such structures be demolished.

However, enforcement is often lacking. In many cases, inspectors do not implement demolition orders, which creates conditions for further corruption. In certain instances, this failure has been formally reported by the investors themselves. (Internal evidence of the Municipality of Gostivar in Excel)

To prevent the long-term damage associated with illegal construction, institutions must take a more serious and coordinated approach. The consequences of these violations may not be immediately visible, but they accumulate over time, manifesting in increased vulnerability to natural disasters, environmental degradation, and social conflict among citizens.

CONCLUSIONS AND RECOMMENDATIONS

The enactment of the Law on Operation with Illegally Constructed Objects confirms the widespread presence of illegal construction across the Republic of North Macedonia. Through this law, individuals who have built without permits are granted the opportunity—provided they meet the legal requirements—to regularize the legal status of their structures and bring them into legal circulation.

Requests for legalization have been submitted in nearly every municipality in the country, illustrating the scale of the problem. The offense of illegal construction is formally recognized under the Criminal Code of the Republic of North Macedonia; however, in practice, very few cases are prosecuted or sanctioned with criminal penalties. This lack of enforcement is largely due to corruption among municipal officials—particularly authorized construction inspectors—as well as within the police, the prosecution service, and the judiciary. These systemic failures contribute to the high incidence of illegal construction and the prevailing sense of impunity.

Based on these findings, the following recommendations are proposed:

1. **Stricter penal sanctions** should be applied for the offense of illegal construction.
2. **Regular, proactive inspections** should be carried out by construction inspectors as part of their official duties.
3. **Ongoing oversight** of construction inspectors' work should be implemented to ensure accountability.
4. **Citizen involvement** should be encouraged by enabling individuals to report cases of illegal construction.

If these recommendations cannot be effectively implemented, then an alternative policy solution would be to **decriminalize illegal construction** while introducing a specialized law that imposes **substantial financial penalties** on investors and construction workers engaged in unauthorized building. Such a law should prioritize the protection of public interests, including the state budget, urban order, and environmental sustainability. Any structure that endangers the public good should be subject to mandatory removal.

In conclusion, this paper has demonstrated that illegal construction causes extensive financial, urban, and ecological harm. It compromises the functionality of municipal institutions and degrades the quality of life for citizens. The primary driver of this offense is a combination of impunity and high-level corruption within municipal administrations, law enforcement, and the judiciary. Investors and builders knowingly engage in illegal construction, often emboldened by institutional protection. The Law on Legalization, while originally intended to resolve past issues, has in practice made matters more complex by effectively decriminalizing the offense and encouraging further violations.

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