The Policy Framework of Spatial Planning in Montenegro

Sonja Dragović, Urban Studies MSci
ISCTE-IUL (Lisbon), KANA/Who if Not Architect (Podgorica)

Montenegro

Area of around 13.800km2

3 distinct regions

23 municipalities

Spatial planning in Montenegro – a brief history

First urban plans made in the 18th century, in the coastal region

Urbanization coefficient in 1921: 6.5% (*Ivanović, 1979*)

After the Second World War: rapid industrialization and urbanization

First comprehensive urban plans:
- Regional Spatial Plan of South Adriatic in 1969
- Regional Spatial Plan of Northern Montenegro in 1972

Yugoslavian context, legislation and expertise

Spatial planning in Montenegro – a brief history

The spatial plan of the Federal Republic of Montenegro (1986)

- laying out the spatial development vision until 2000
- amended twice, in 1991 and 1997
- significant research done
- special purpose spatial plans for the areas of national parks and for the coastal region produced

Most of the municipal spatial plans and general urban plans were completed during this period as well

Spatial planning in Montenegro – a brief history

A new spatial plan of Montenegro adopted in 2008, until 2020

Some of the problems encountered in the process (According to *Doderović and Ivanović, 2013*):

- 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
- imprecise definitions for the concept of public good

Structural defects of the entire planning process, rooted in the lack of planning tradition and regional coordination

The legal framework

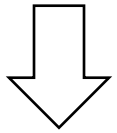
The Law on Spatial Planning has been changed frequently

The Law on Spatial Planning and Development, 1995
The Law on Spatial Planning and Development, 2005
The Law on Spatial Planning and Construction, 2008
The Law on Spatial Planning and Construction, 2017

The legal framework

The Law on Spatial Planning has been changed frequently

The Law on Spatial Planning and Development, 1995
The Law on Spatial Planning and Development, 2005
The Law on Spatial Planning and Construction, 2008
The Law on Spatial Planning and Construction, 2017



Centralisation of the process

The Law of 2008

The Law on Spatial Planning and Construction of 2008

- the traditional hierarchical structure between the municipal and the state-level planning documents

- separate local and central-level procedures for adopting these documents

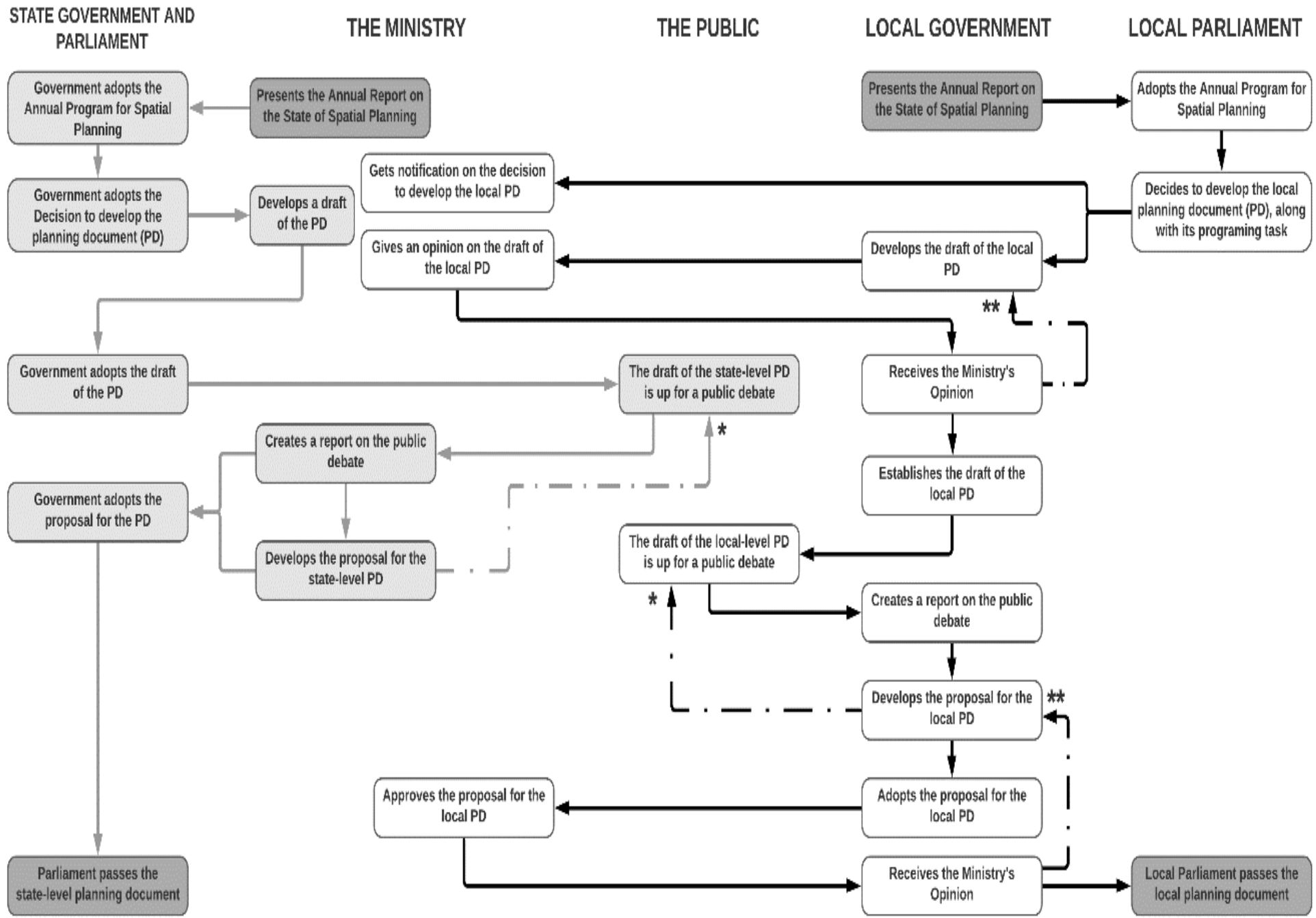
The Law of 2008

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)

Local planning documents:

- **the local spatial urban plan** (determines the goals of spatial and urban development 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)


STATE GOVERNMENT AND PARLIAMENT
THE MINISTRY
THE PUBLIC
LOCAL GOVERNMENT
LOCAL PARLIAMENT
Government adopts the Annual Program for Spatial Planning
Presents the Annual Report on the State of Spatial Planning
Presents the Annual Report on the State of Spatial Planning
Adopts the Annual Program for Spatial Planning
Government adopts the Decision to develop the planning document (PD)
Develops a draft of the PD
Gets notification on the decision to develop the local PD
Decides to develop the local planning document (PD), along with its programing task
Gives an opinion on the draft of the local PD
Develops the draft of the local PD
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Government adopts the draft of the PD
The draft of the state-level PD is up for a public debate
Receives the Ministry's Opinion
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Creates a report on the public debate
Establishes the draft of the local PD
Government adopts the proposal for the PD
Develops the proposal for the state-level PD
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Develops the proposal for the local PD
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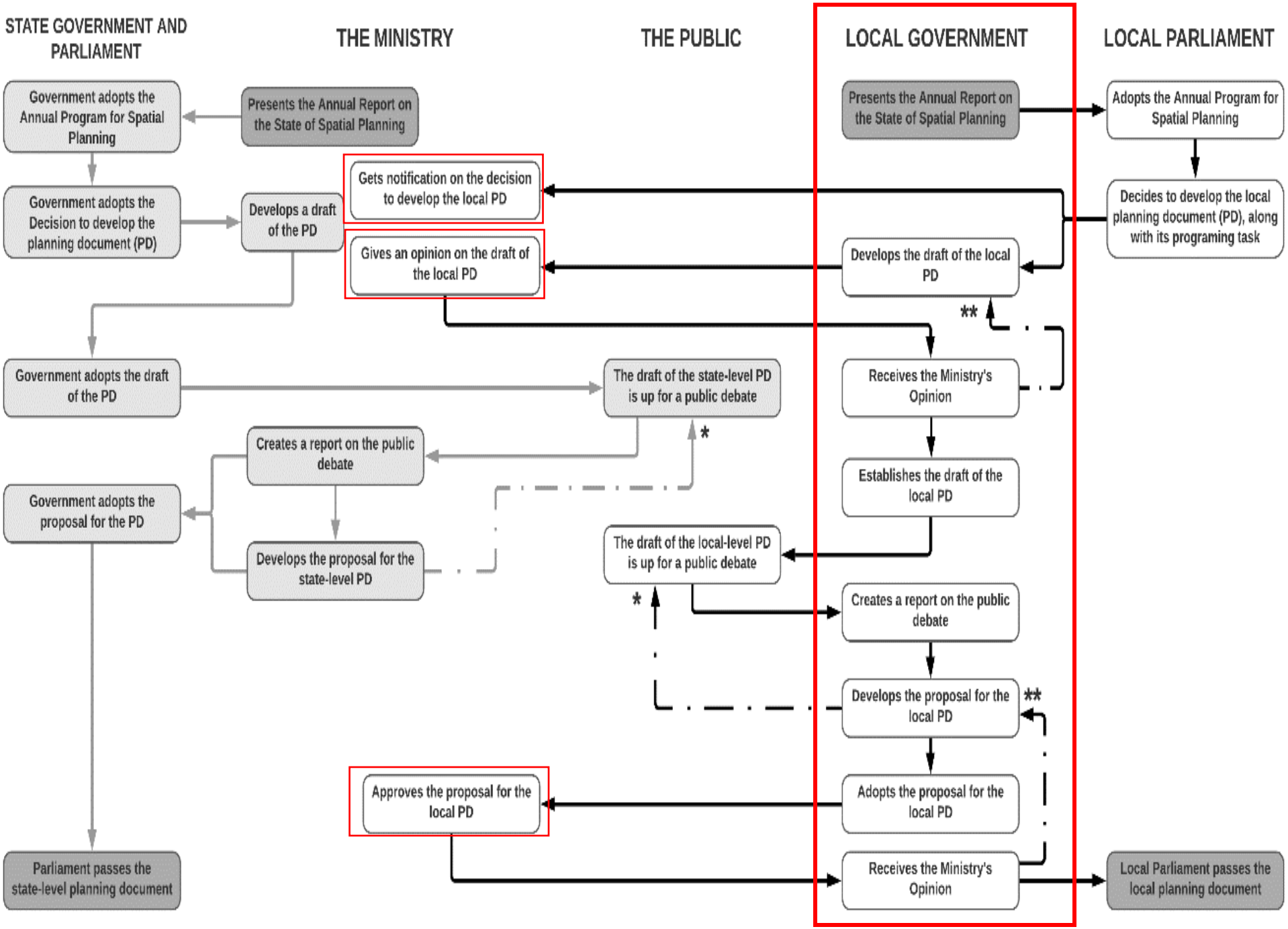
Approves the proposal for the local PD
Adopts the proposal for the local PD
Parliament passes the state-level planning document
Receives the Ministry's Opinion
Local Parliament passes the local planning document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The Law of 2008

- Local spatial planning decisions ⇨ the municipal authorities ⇨ need for both more autonomy and more support

- The Union of Municipalities of Montenegro (2009)
  A review of problems in the application of the 2008 Law:

  - the procedure of adopting the new and changing the existing spatial plans too cumbersome and should be simplified
  - the disparities between the plans at local and central level are significant
  - the inconsistency in the plans of neighbouring municipalities
  - lack of local capacities to produce spatial plans
  - lack of local expertise for the proper online presentation of planning documents (as prescribed by the Law)
  - insufficient time (1 year) for the municipalities to adapt to the demands of the 2008 spatial planning legislation.

  Propositions:

  - establishing a clear hierarchy of the planning documents along with the procedure for their harmonization,
  - exploring the possibility of introducing regional-level plans
  - increasing the state support in strengthening the local technical capacities
  - improving the process of public participation in the spatial planning procedures
  - providing more time to implement the Law

The Law of 2008

However, strengthening the local capacities was not the prime objective of the central government

In the focus: improving the business environment, i.e., making the process of obtaining building permits simpler and more affordable

Land Administration and Management Project (LAMP), ongoing from 2009 until 2016, supported by the World Bank, with the goal to improve the efficiency of permitting and property registration (*The World Bank, 2008*)

Through the LAMP, 9 spatial urban and 22 detailed urban plans were adopted in less developed municipalities of the northern and central regions of Montenegro

Still, 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 Law of 2008

The 2008 Law was amended seven times before it was revoked and replaced by the 2017 Law

Adopted during in the 2010-2014 period, these amendments resulted in

- changes in how municipalities are compensated for the utilities provision on construction land
- streamlining the procedure of issuing building permits and broadening the state government's authority in this area
- lowering the minimal amounts of fines for violations against the Law on Spatial Planning and Construction
- enabling the private investors to initiate and finance the creation of new spatial plans and to propose changes to the existing ones

The cumulative effect 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 Law of 2008

Building permits: a case study

According to the Law of 2008, the local government oversaw issuing building permits for the projects constructed in accordance with the local-level planning document. The exceptions were few, and included complex constructions (e.g., industrial and infrastructural projects, stadiums with capacity for more than 3,000 people, hotels with a surface area of more than 3,000 m2).

However, this list of exceptions was gradually expanded through the amendments: af first, in 2011, the central government gained the authority to issue building permits for all “state projects of public interest” (e.g., production systems employing more than 300 workers, five-star hotels with at least 120 rooms, and education, science, health, culture and social service buildings) and for the smaller hotels (all with a surface area of more than 1,000 m2).

This continued with the amendments of 2013, which expanded the definition of “state projects of public interest” to include facilities to produce 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 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 Law of 2008

When 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 business side of things: 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 context: 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, it is evident what impact of the expanding definition of "state projects of public interest" might have on 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*)

The Law of 2008

The lack of funds and expertise at the local level ⇨ leave it to the businesses!

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 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).

The Union of Municipalities (2009) requested that it should become possible for private investors to finance a local site study; here this request was accepted and significantly expanded.

The local governments have struggled to create and adopt planning documentation throughout the entire period of the Law of 2008 implementation – a possible excuse for inviting the private funding to enter the process of spatial planning, to help local governments finance spatial plans, to increase local efficiency, and to expand the business opportunities for commercial planning bureaus (allowed to undertake the work of producing spatial plans by this Law)

The Union of Municipalities (2009) 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.

The Law of 2017

The new Law on Spatial Planning and Construction, passed on Sept. 30, 2017

Only 2 planning documents: **spatial plan** and **general regulatory plan**

- 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

- 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

No municipal spatial plans

Centralization: planning decisions made by the Ministry

Reasoning: let's to fix "overplanning" and remove business barriers

The Law of 2017

Huge opposition from local governments, planning associations, NGOs; not a partisan issue

Public debate: 750 comments and questions, final report amounting to 130.000 words

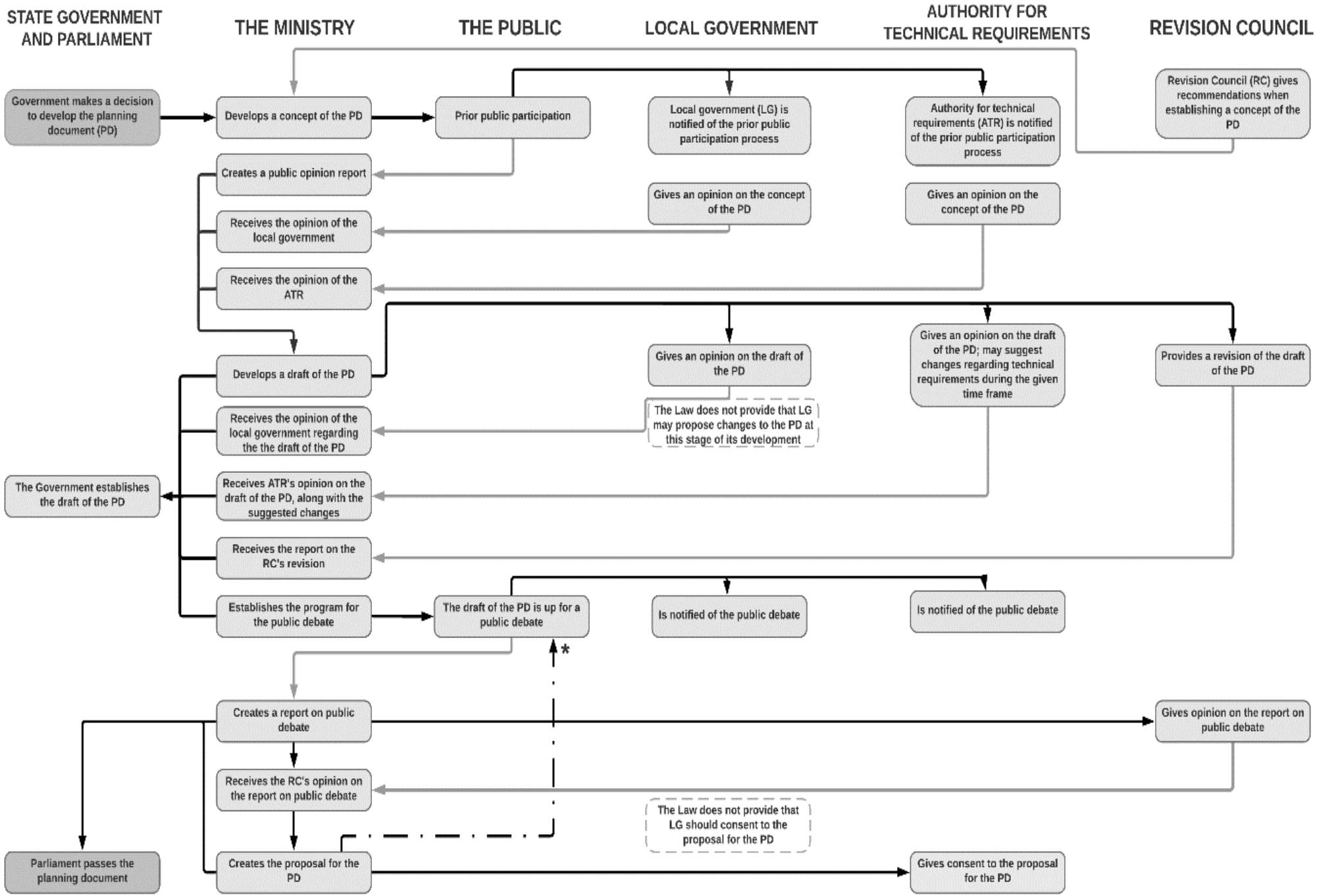
Still: no substantial changes to the main idea of the new Law resulted from the public debate

The Law of 2017

The Law of 2017 introduced two new actors into the procedure of spatial planning:

- the **Authority for Technical Requirements**, 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**, 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.


STATE GOVERNMENT AND PARLIAMENT
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AUTHORITY FOR TECHNICAL REQUIREMENTS
REVISION COUNCIL
Government makes a decision to develop the planning document (PD)
Develops a concept of the PD
Prior public participation
Local government (LG) is notified of the prior public participation process
Authority for technical requirements (ATR) is notified of the prior public participation process
Revision Council (RC) gives recommendations when establishing a concept of the PD
Creates a public opinion report
Gives an opinion on the concept of the PD
Gives an opinion on the concept of the PD
Receives the opinion of the local government
Receives the opinion of the ATR
Develops a draft of the PD
Gives an opinion on the draft of the PD
Gives an opinion on the draft of the PD; may suggest changes regarding technical requirements during the given time frame
Provides a revision of the draft of the PD
The Law does not provide that LG may propose changes to the PD at this stage of its development
Receives the opinion of the local government regarding the the draft of the PD
The Government establishes the draft of the PD
Receives ATR's opinion on the draft of the PD, along with the suggested changes
Receives the report on the RC's revision
Establishes the program for the public debate
The draft of the PD is up for a public debate
Is notified of the public debate
Is notified of the public debate
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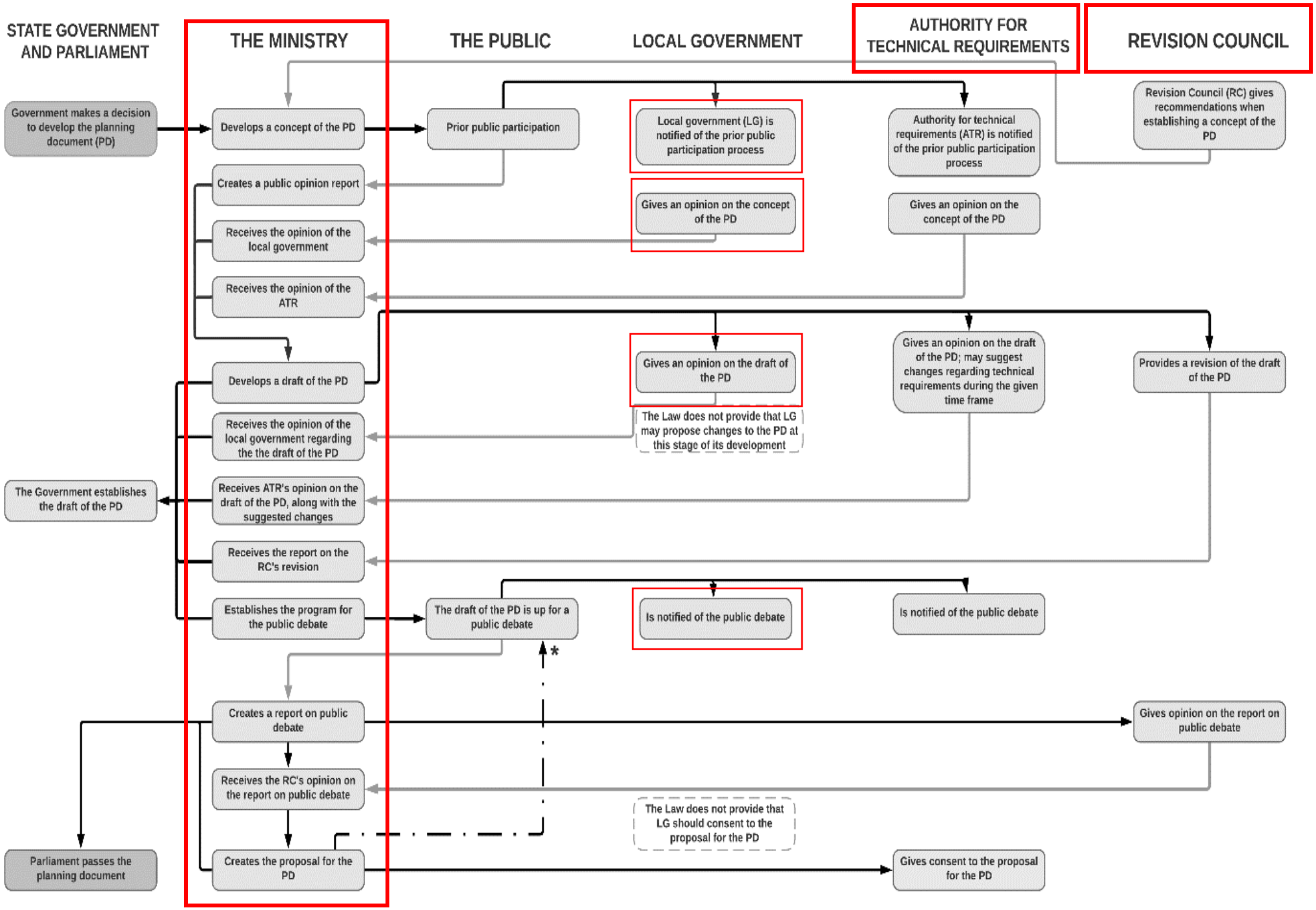
Creates a report on public debate
Gives opinion on the report on public debate
Receives the RC's opinion on the report on public debate
The Law does not provide that LG should consent to the proposal for the PD
Parliament passes the planning document
Creates the proposal for the PD
Gives consent to the proposal for the PD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The Law of 2017

In addition to changing the spatial planning process, the Law of 2017 altered several other aspects of spatial development – some of the most important:

- 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)

- 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.

The Law of 2017

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 local planning documents in accordance with the Law of 2008, i.e., according to the less centralized principles. The deadline was extended twice, within two different sets of amendments – the first until the beginning of October 2018, and then until the end of December 2018.

Such frequent changes and constantly shifting, negotiable deadlines contributed towards the perception of the new legislation as unstable and unreliable.

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. 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.

The Law of 2017

Another crucial change: 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

Therefore, 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

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

Example: 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, effectively divorcing the construction process from the process of spatial planning

In conclusion: very important decisions are left to be made ad hoc, on a case-by-case basis, and outside of the framework of a carefully crafted detailed spatial plan

In Summary

- The numerous and frequent changes in legislation have produced difficulties in implementing it
- 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 Law of 2017 set out to solve the problem of the inadequate municipal capacities by formally centralizing the planning process but failed to consider 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. This complex combination of the old plans and new regulations left the public disoriented and confused
- 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
- 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

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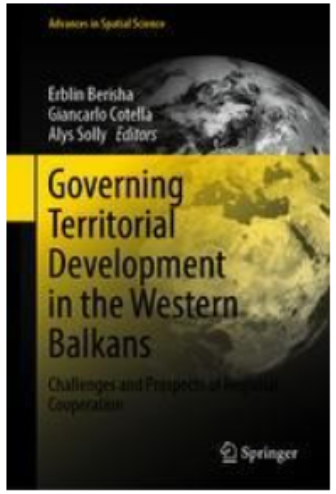

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Challenges and Prospects of Regional Cooperation

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Forthcoming chapter:

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

Sonja Dragović

One afterthought:

Political changes at the local level

vis-à-vis

changes in spatial planning policy

What is there to govern, if not spatial development?

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sonjadragovic@yahoo.com