

USURPATION OF REAL ESTATE AND ILLEGAL CONSTRUCTIONS AS A CRIMINAL PHENOMENON: A CASE STUDY OF THE TETOVO REGION, NORTH MACEDONIA

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Abstract

The phenomenon of real estate usurpation and illegal construction, which is a criminal activity, is very evident in the Tetovo region. A key factor influencing the spread of this criminal phenomenon is the ineffective functioning of the institutions tasked with preventing and combating it.

This paper will elaborate on several issues related to the legal regulation that provides for criminal sanctions against actions related to the usurpation of real estate and unauthorized construction, the role of the construction inspectorate and the Agency for Real Estate and Cadastre, as well as the management of measures and activities undertaken by police bodies to uncover and document these criminal offenses.

Among other things, some statistical data on the volume and dynamics of these criminal offenses during the period 2021-2023, obtained from the Tetovo Internal Affairs Sector, will be analyzed. During the work on this topic, the analysis method, statistical method, comparative method, observation method, etc., will be used.

In conclusion, some concrete conclusions related to this type of criminality will be given.

Keywords: usurpation, illegal construction, criminal offense, criminal phenomenon.

1. Usurpation and unauthorized construction - criminal legal framework

In the Criminal Code of the Republic of North Macedonia (PC of NMK), usurpation of real estate and unauthorized construction are provided for as separate criminal offenses.

Because in most criminal cases these two offenses are encountered together, they will be elaborated as such in order to understand and have a clearer flow in the detection and proof of this type of crime.

According to Article 225 of the Penal Code of the Republic of North Macedonia, usurpation of real estate occurs in situations where a person, to possess it, takes over another person's real estate which has been declared property in general use, property under temporary protection or cultural heritage, natural rarity or other natural wealth.

According to paragraph 3 of this article, a legal entity is also criminally liable. The second paragraph of this article states: If the act was committed to use the land for construction or use that irreversibly destroys the natural qualities of the real estate.

In police practice, it is often practiced to take ex officio measures only in cases where we are dealing with the usurpation of state property. If we analyze the relevant article, paragraph 2, in the commentary made by Prof. Kambovski, it turns out that measures must be taken even in the event of usurpation of private property (Kambovski, 2011, p.276).

Therefore, police officers should be careful in this regard, perhaps they are denying a citizen's right that is due to them by law, but on the other hand, these same officers are potential candidates to be held accountable for the criminal offense of abuse of official position, this is the third form of this offense, which is failure to perform official duty.

Regarding the criminal offense of Illegal Construction, the same is provided for in Article 244-a of the Penal Code of the Republic of North Macedonia (Osmani, 2015, pp.207-207).

If we analyze the relevant article, we can come to several conclusions, namely:

- A criminal offense exists if we have construction without a permit from the relevant authorities;
- The criminal offense exists even if we have a permit, but the facility in question is not built in accordance with the basic project;
- The investor, builder or master, as well as the supervisor, are responsible for the criminal offense;
- In certain situations, an official in local self-government is also liable, if he or she has abused his or her position within his or her scope of activity, such as issuing a decision on location conditions that is contrary to the valid urban plan, or issuing a construction permit contrary to the decision on location conditions, which constitutes a violation of the planned space;
- Legal entities are also subject to criminal liability (Halili, 2023, pp.475-475).

2. Investigative measures applied in uncovering and proving criminal situations related to usurpation and unauthorized construction

Unauthorized construction and occupation as criminal offenses can be reported to the bodies that fight crime, first of all to the police and the prosecutor's office by an anonymous person, a natural person, a responsible person in a legal entity, then as a result of police and other operational activities where occupations or constructions are directly encountered for which the investor has not previously obtained a construction permit. Regardless of who the person is filing the case and in what form the same is filed; the specific institutions must undertake measures and activities by the legal regulations of their scope of activity, in order to secure evidence to prove the crime. If the case is filed with the police bodies, the standard measures that are taken in such situations are: Preparation of an action plan that foresees the activities that will be undertaken, the persons and means to carry out the planned activities, the time of implementation, etc. Then the investigative team goes to the scene of the incident to inspect the scene. The investigative group includes inspectors who are engaged in the case, a technical crime scene inspector, and uniformed police who must secure the scene. After arriving at the scene, it is best to first ensure that the person who committed the usurpation or construction without a permit is present during the inspection of the scene and that he or she provides documentation or information regarding the specific issue (Halili, 2023). The forensic team measures the object, takes photographs, and prepares an adequate report as provided for such cases. If the suspect does not possess adequate documentation to prove that the place is not occupied, this is an indicator or evidence that proves the criminal offense of usurpation of immovable property. But this is not enough to prove this type of crime in the full sense of the word, perhaps the police institution is not the specific body called and authorized to prove that the place is state property or not.

In these situations, it is always the rule, regardless of whether we have data on the matter in question, that we must, through a special act through the Prosecutor's Office, secure an order by which authorized officials of the Real Estate Cadastre Agency will be ordered to go to the scene of the incident and, in the presence of police authorities, ascertain in a report whether it is a case of usurpation or not, also providing other characteristics related to it, such as the usurped area, location, etc. After securing such a document from the police, a criminal report is filed against the person or persons who committed the usurpation for the criminal offense of Usurpation of Real Estate. So, from what was said above, we must come to a very important conclusion related to the police measures and activities that must be undertaken in the process

of proving the crime. Police officers, in addition to knowing the field of criminology, criminal procedure and other areas of security, must also have knowledge in the field of management, which means knowing how to organize, coordinate and coordinate their activities in terms of where and what needs to be done to obtain adequate evidence that would prove the crime and result in an adequate Criminal Report. This conclusion applies not only to cases when we are dealing with the documentation of criminal offenses related to usurpation, but also to other offenses where we need findings from competent legal bodies called to provide such findings (Halili, 2023, p.473). Regarding the criminal offense of Illegal Construction, the same is provided for in Article 244 of the Penal Code of NMK (Osmani, 2015, pp.206-207).

The manner of presenting these acts is almost the same as acts related to usurpation.

After the discovery or presentation of the case, the police activities that are undertaken are almost the same as in the case of usurpation, but the difference is that in this case the police authorities do not address the Real Estate Cadastre Office but the Construction Inspectorate whose role is to go to the scene of the incident to ascertain the factual situation with a report, and to send the same to the police for further measures. If the response of the construction inspectorate is such that it proves that the investor in question does not possess a construction permit for the specific object, then we have adequate evidence that proves the criminal offense of Illegal Construction.

Otherwise, the phenomenon of usurpation and construction without permission has recently been very widespread, and for this reason, Criminal Investigations are open for the same in most of the IAS of NMK, including IAS-Tetovo. Often in practice, it happens that in a criminal situation we have both the aforementioned criminal offenses, namely, both usurpation of real estate and illegal construction. In these situations, after we have secured the necessary documentation from the Real Estate Cadastre Agency and the Construction Inspectorate, official records including photo documentation from the Police, a Criminal Report is compiled that includes both criminal offenses.

Below, we will elaborate on an example where the two criminal offenses that are the subject of this paper come into play.

The following case was reported to the Tetovo police station: In the location of Kodra e Diellit, the person VV built a house without a building permit and on the land owned by the NMK. After the case was reported, the Economic Crimes Unit undertook several measures and activities to clarify and verify the factual situation. Initially, a plan was drawn up, which foresees the implementation of several measures, including verification of the investor's identity, the exact location of the facility, the company that built the facility, the sub-tenant of the facility, obtaining a written response from the construction inspectorate, for eventual possession of the construction permit, drawing up a request to the Prosecutor's Office to obtain an order that must be submitted to the Cadastral Agency to go to the scene of the incident to ascertain the owner of the property where the facility was built or is being built, the departure of the IAS - Tetovo investigative team (members of the technical crime unit, police crime officers) in cooperation with Cadastral officers to the scene of the incident. After drawing up the plan, the implementation phase of the plan begins. This phase means providing answers to the issues we have planned. In this case, the epilogue was such that the investor VV had not obtained a construction permit, which was confirmed by the Construction Inspectorate of the Municipality of Tetovo, which, according to the measurement made by the Cadastre officials, resulted in a part of the constructed object having included the land owned by the NMK. As a result of these findings, the IAS Economic Crimes Unit has evidence for the criminal offense of Illegal Construction and the criminal offense of Usurpation of Real Estate. The question arises as to who should be charged with these offenses? Referring to the aforementioned articles, the criminal charge in this case includes the investor, the firm carrying out the construction together with the person responsible for it, as well as the supervisor of the object. The

supervisor of the facility, in addition to the criminal offense of construction without a permit, should also be held accountable for the criminal offense of negligent performance of duty as provided for in Article 353-c of the Penal Code of NMK. This offense should be charged because, according to Article 36 of the Law on Construction (Official Gazette of the Republic of Macedonia, 2013), the superintendent engineer may not sublease the facility if the investor has not obtained a construction permit, if the contractor of the facility does not possess a license and authorization for such work.

3. Volume and dynamics of the criminal offense of Usurpation and construction without permission, in the Tetovo region during the period 2021-2023

In any crime research project in a given area, it is important to obtain indicators of the volume and dynamics of the specific criminal phenomenon. In this case, the number and dynamics of criminal offenses related to usurpation and unauthorized construction in the Tetovo region will be analyzed during the period 2021-2023.

Table no.1 Number and dynamics of criminal offenses of usurpation and unauthorized construction in the Tetovo region during the period 2021-2023 (Annual Reporto of IAS Tetovo, 2021, 2022, 2023)

Year	Number of Criminal Offenses, article	Number of criminal offenses: Construction without an article permit
2021	4	10
2022	11	18
2023	18	28
Total	33	56

From the table we see that during the period 2021 -2023, the total number of criminal offenses of usurpation is 33, while illegal construction is 56. The year 2023 is characterized by more criminal offenses of usurpation and illegal construction compared to other years. The data from the table does not correspond to the reality on the ground. In fact, according to information data, the actual number of these offenses in the Tetovo region is much higher.

Conclusion

- The criminal offenses of usurpation and unauthorized construction are most often encountered together in a given criminal situation.
- The ways in which they are discovered are very diverse, but they are mainly reported by individuals directly or anonymously;
- In investigating these crimes, it is not enough for the police to inspect the scene of the crime, but also for other institutions such as the Real Estate Cadastre Agency when it comes to usurpation, and the State Construction Inspectorate when it comes to unauthorized construction.
- Without cooperation with the institutions of the Real Estate Cadastre Agency and the Construction Inspectorate, we are unable to compile a criminal report with evidence that would be acceptable to the Basic Prosecutor.
- Mostly, perpetrators of the criminal offense of usurpation commit the same on state land.
- In matters related to unauthorized construction, constructions that do not possess a permit for the entire building predominate, or that do possess one but do not adhere to the intended project, which means that they increase the dimensions and floors of the building.

- The main cause of issues related to unauthorized construction lies in the bureaucratic procedures of the relevant inspectorates within the Municipality of Tetovo, for issuing permits on the one hand, and on the other hand, the failure to take appropriate measures on the ground by the construction inspectorate.

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