NEW LEGISLATION ABOUT ILLEGAL CONSTRUCTION IN GREECE. THE EFFECT OF ECONOMIC CRISIS.

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Introduction

This presentation is the most recent one from a series of presentations and papers of this author, about illegal construction in Europe, and particularly in Greece. Every new piece of related work in the last 15 years dealt with new developments in relative legislation, policies, and implementations. This particular one is of special importance, since it deals with this issue but under exceptional circumstances –the severe economic crisis, which affected priorities and objectives of legislation.

Illegal construction seems to be an inherent element of Greek urban history. It has definitely affected the shape and function of Greek cities from the past to the present. Urban and rural areas throughout the country have been suffering by the old and widespread phenomenon of illegal constructions. This has been the main and most visible factor of leading to environmental degradation. Some 93,000 legal and 31,000 illegal houses and apartments were constructed each year in Greece between 1991 and 2001. Most of them were in Attica and along the coastline (Technical Chamber of Greece, 2004).

Since early 1980s, efforts have been made to face the problem of illegal construction, through the production of a series of laws and decrees. Usually, a much elaborated –but also complex and often rigid- legal framework had been synthesized, implemented, and replaced by a new one, and most of the times without any evaluation of the up to then implementation. In the meantime, research on the subject proved that the phenomenon of illegal construction continued exhibiting the same intensity, with periodic subsidence and peaks -after the inaction of a new law, and respectively, when the implementation of it faded because of bureaucratic procedures and political interventions.

Our hypothesis is that illegal construction cannot be tackled only by the production of continuously newer legislation, usually increasingly complex and with an alarmingly increasing pace of succession. Illegal construction will further increase if law enforcement is not subsequent and combined to policies. The proposed paper will describe the succession of related legislation in Greece, it will examine the structure of the various legal instruments currently in effect, and it will analyze the problems concerning their (in) effectiveness, accruing from their increasing complexity.

Definitions

Illegal constructions are considered the ones:
without building permit or
with excess of the building permit or
with a building permit which was retracted or
in violation of the existing building regulations or
with change of its use without issuing a permit for it.
(L.1577/85 – L.2831/00: General Construction Code, art. 22)

Historical Phases

First peak of illegal construction was in mid '20s, after the disaster of Asia Minor at 1922. It was mostly in the fringes of the cities, where 50% of the 1,5 million refugees resided.

The second wave was around 50s and 60s, as an effect of the internal migration from rural areas to the cities (mainly Athens, Thessaloniki). In 1951, 8% of constructions in the area of the capital were illegal, while in the period 1951 – 1961 there was a further 13,7% increase of the number of illegal buildings.

In the '80s and '90s the nature of illegal construction changed. It was not because of urgent needs for shelter any more, but for holiday houses. This was in accordance to the rise of living standards in Greek society. In order to realize the magnitude and endurance of the phenomenon, one has to consider that at the period 1985-1995, 20%-25% of constructions in Greece were partly or totally illegal, while at 1997, from a total of residence buildings of 4.643.379, 1.000.000 were partly or totally illegal. In this period, a network for exploiting rural land was developed, which lasts until today.

The process of exploiting rural land for creating illegal constructions, includes the following stages: 1. Illegal occupation of (usually) public and (seldom) private land. 2. Division of land in small parcels and sale of them. 3. Illegal constructions on parcels. 4. Political pressure for including the area in the expansions of city plans.

Usual Causes for illegal construction

The most frequently recorded reasons for illegal construction are: 1. Urgent housing needs, 2. Economic incentives and profiteering, 3. Lack of housing policies, lack of land cadaster, complex and controversial legislation, no regional planning*, 4. Political clientelism, gradual legitimization of areas of illegal houses due to political pressure, 5. Lack of effective system of detecting illegal constructions (no clearly defined city limits, uncontrolled urban sprawl, outdated technical methods of inspection). 6. Lack of cooperation among the involved departments, corruption. 7. The small size of the majority of properties in land.

* Currently only 3% of the housing production comes from organized housing programmes. Illegal housing was a solution for needs for cheap houses.

Historic succession of laws related to illegal construction

The first legislation concerning exclusively illegal construction was P.D. of 18/3/1926 "concerning illegal constructions and prosecution …". It was based on L.D. 17/7/1923, which was the basis of planning legislation for the 20th century Greece. According to it, illegal constructions were to be demolished by the police. There was minimal implementation of this law, and this signified the beginning of a tradition of impunity and indirect encouragement of informal building.

The two pieces of legislation which succeeded P.D. of 18/3/1926 were L. 410/68 "concerning illegal buildings" and R.D. 758/68 "estimation of fines...". The main difference which they introduced was that while illegal buildings before 1968 were exempted from demolition by paying a fine (3% or 10% of the value of the construction), according to them, owners of illegal buildings were to be prosecuted.

Despite the above, illegal construction was alarmingly increasing, so, in mid '70s there was another effort to restrict it by introducing a number of new legislative tools:

General Building Regulation (L.D. 8/73), L.D. 349/74 "concerning demolition of illegal constructions…", L. 651/77 "abolition of L. 410/68, regulations concerning illegal constructions…", etc. According to them, illegal buildings (new constructions) were to be demolished if they were violating significant planning regulations. Fines were imposed, equal to the value of the construction, which were multiplied by five in case of rebuilding the illegal

construction. Penalties also included imprisonment for the owners, as well as for the construction workers, the developers, and the engineers, and the machinery used, had to be confiscated. Illegal buildings were prohibited of being connected to networks of electricity, hydro etc. Complimentary measures were also introduced, such as prohibition of parcellation of rural land in pieces smaller than 4000 m2, etc. At the same time, though, another law, L. 720/77 "exemption from demolition of illegal constructions…", was working at the opposite direction from the above since, according to it, all illegal constructions are exempted from demolition, by the exception of the ones built in public spaces and protected areas, by paying a fine. This law was nullified three years later, after the reaction of the Council of State which characterized it as being unconstitutional (decisions 257, 1687/1980).

The basis for the various laws concerning illegal constructions was Law 1337/1983, which was also the basis for the contemporary urban planning legislation in Greece. It provided for a process of legalization of illegal constructions by paying fines. Constructions were exempted from being legalized when built in public and/or protected areas, if they were of low quality and dangerous, if their use or their aesthetics were not compatible to the surrounding environment. It also clearly stated that illegal structures made after 1983 should be demolished. This was also embodied to the 1985 revision of the Constitution. Since then, though, various related laws were introduced, setting stricter penalties, describing procedures for paying fines, but also describing various cases in which demolition would not take place. These were L. 1512/85 "modifications of planning regulations..", Ministerial Decision 23186/3626/15-31.4.85, L. 2052/92, L. 2242/94 "urban planning of areas of holiday residences…", P.D. 267/98 "procedure of characterization and demolition of illegal constructions…" and L. 3212/03 "Building license, and other planning regulations……."
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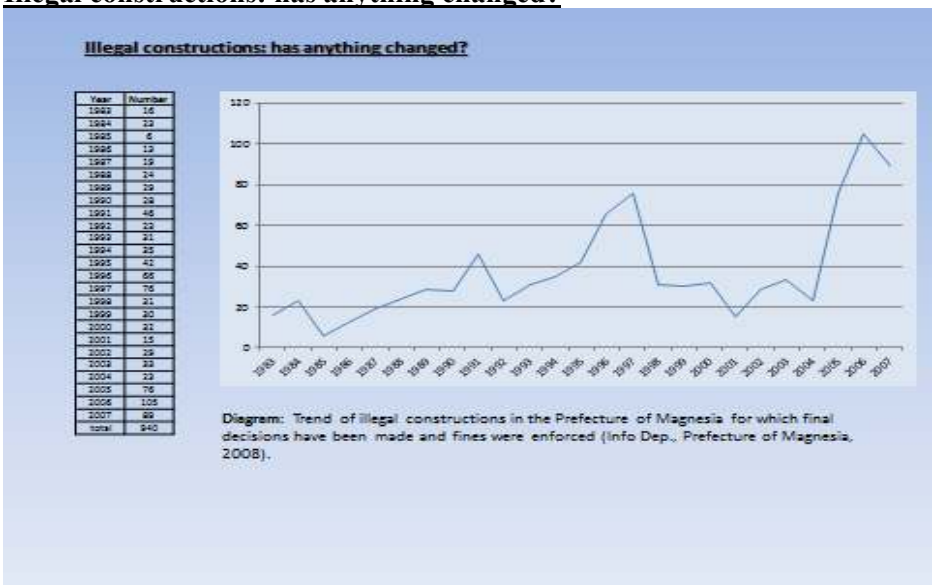
Legal diversions from legal requirements at that period could also be considered:

- M.D. Γ.4//1983 Re-estimation of non-paid fines
- M.D. 31//1985 (ΥΑ 23186/3626 ΦΕΚ Β 172 1985): exemptions from demolition and connection to electricity and hydro networks for social reasons
- M.D. 231//1985 (ΥΑ 23188/3628 ΦΕΚ Β 172 1985): changing annual fines for exemption from demolition to once paid fines
- M.D. 381//1989: Connection of illegal constructions to electricity and hydro networks
- D. Circ.//1998: Special conditions of implementing legal acts (selling, inheriting etc.) for illegal constructions after the 31st.1.1983
- M.D. 110//1999: connection of illegal constructions to electricity networks
- L 2831/2000: exemptions from demolition
- M.D. 1208/2004: Procedure and documents for temporary connection of illegal constructions to hydro and electricity networks
- M.D. 109//2005 (ΥΑ 1090652/6799/Β0010 ΦΕΚ Β 1393 2005): special conditions of demolishing illegal construction on the coastline
- M.D. 2587/2005: Extension of the period of applications for purchasing illegally occupied land
- M.D. 348//2008 (ΥΑ 348849 ΦΕΚ Β 1 2008): Special conditions of exemptions of demolishing illegal constructions related to stock farming.

This ambivalent way of treating illegal construction did not only fail to discourage it, but proved to be an effective fertilizer for its growth and spreading all over the country.

Illegal constructions: has anything changed?



In 2009 pressure for legalization was mounting. Legalization seen as a source of fresh money in the National Treasury, as well as an "electoral weapon". The Ministry of Planning, Public Works and the Environment expressed intentions to prepare a bill for legalization, based on a drastic reduction of fines, which would encourage flat owners to declare the illegal closing of semi hypethral spaces, the illegal use of the basements as main residences etc.

Debates and heated reactions erupted among political parties, public bodies, NGOs, associations and unions, being for, or against such a prospect. Opposition to the bill was expressed by political parties from the centre and centre – left , the Technical Chamber of Greece, the Association of Notary Publics, unions of lawyers, environmental associations etc., on environmental, legal, and ethical grounds. Support for the planned bill was expressed by the Union of Developers and the Union of Owners of Immobile Property, who were claiming to express the desire of citizens for more residential space, and the desire of the government to gain more money.

With the change of government after national elections, the new Ministry of Planning and the environment suspended the "regularization" part of the implementation of Law 3375/2009, until May 2010. The rest of the measures concerning semi hypethral spaces remained. Furthermore, the Council of the State ruled that "regularization" is unconstitutional and all illegal constructions made after 1983 should have been demolished. L. 3375/2009 was replaced by L. 4014/2011.

The legislation which is in effect at the present in Greece, is Law 4178/2013. It is worth mentioning that L. 4178/2013 was introduced in haste, since in April 2013, the Council of the State ruled that the previous law (Law 4014/2011) was unconstitutional in specific articles and in its whole, and thus, it had to be replaced. L. 4014/2011 kept on using "regularization" in a way that many categories of illegal constructions could be allowed to be used as legal for the next 30 years, provided that a penalty was deposited for this purpose. In fact, the objectives of Law 4014/2011 –given the economic crisis in Greece- were directed towards fine collections, rather than dealing decisively with illegal construction. And this is also obvious to the objectives of the new legislation, although the very striking elements of the previous law were omitted.

According to its provisions, acts of law directly or indirectly granting property rights on immobile property containing or consisting of illegal constructions, are forbidden or –if

conducted- automatically nullified. The law also describes cases for which, there are exceptions to the above rule. Types of illegal constructions –characterized as "arbitrary"- excluded from the exceptions are the following:

- Illegal buildings or structures built on public property, and on open/public spaces.
- Illegal buildings or structures in preexisting adits/galleries.
- Illegal buildings that have been built on or too close to roads or streets and therefore pose a safety hazard to transport.
- Illegal buildings or structures on forestry land, seashores, beaches, or too close to coastlines, or riverbeds.
- Illegal buildings in other protected areas i.e. archaeological sites, historical sites, traditional UNESCO villages, NATURA areas, national parks etc.

Penalties and punishments are described, in the forms of fines, imprisonment, and expulsion from professional bodies, for the owner of the illegal structure but also for the engineers involved in their study and/or construction, the workers working in them, and the notary publics issuing legal acts granting property rights. Also, regarding the Environmental Authorization of works and activities, this Law proceeds in the formation of the Central Council of Environmental Terms and Conditions, aiming to consult on the outcome of Environmental Impact Assessments studies on specific cases.

Concluding remarks

Two main conclusions can be extracted from the above: a. illegal construction has been inherent to the development of Greek cities and villages. It is aimed to tackle it through a strict system of penalties, fines etc., the implementation of which, though, has been proved almost impossible. b. political initiatives up to now, were dealing with this phenomenon by having as main goal the maximization of economic and political profit, contrary to the principles of the wellbeing of citizens, the protection of the urban and rural environment, and sustainability in general.

Economic crisis made the above even more intense and the accruing contradictions even more obvious. New legislation seems to have as main objective the collection of money and not the discouragement of illegal construction. The indirect effects in fact, seem to let this phenomenon untouched and uninhibited, since it is a source of channeling more –badly needed- money to fill the government's dept. And the arising questions concern the sustainability principles put in gradually greater risk, and the fate of future generations being a matter of irresponsible gamble.

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