



Legal aspects for protection of Sinjajevina

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Sources of Law



- Constitution of Montenegro (Official gazette" no. 1/2007 and 38/2013 - Amendments I-XVI).
- Law on ownership rights ("Official gazette" no. 19/2009).
- Law on State Property ("Official gazette" no. 21/2009 and 40/2011.).
- Law on Environment ("Official Gazette of Montenegro" No. 52/16);
- Law on Nature Protection („Official gazette" no. 54/16).
- Law on Forests („Official gazette" no. 74/2010).
- Law on waters („Official gazette" no. 27/2007 and „Official gazette" no. 32/2011, 47/2011 – corr, 48/2015, 52/2016, 2/2017 – other law, 80/2017 other law, 55/2016 - other law and 84/2018).
- Law on the Protection of Cultural Property („Official gazette" no. 49/10)

Constitution of Montenegro

- **Montenegro is declared an ecological country** by the Declaration of ecological State of Montenegro, adopted **on 20th September 1991** by the Parliament of the Republic of Montenegro. Therefore, the environment represents one of the most important assets for the future of the country, which is why one of the priorities of the Government is to prevent the deterioration of the environment due to pollution and exploitation of natural resources.
- **The right to healthy environment is a fundamental right**, guaranteed by the Constitution of Montenegro, which in the Article 1, defines Montenegro as a civil, democratic and ecological state of social justice, which is founded on the Rule of Law.
- **Article 23 paragraph 1 of the Constitution provides that everyone shall have the right to a healthy environment. Everyone shall have the right to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment and legal protection of these rights.**
- **Everyone, the state in particular, shall be bound to preserve and improve the environment.**
- Article 78 of Constitution provides that everybody (including the state) is obliged to protect the natural and cultural heritage of public interest.
- Guarantees of the ownership right in Article 58 of Constitution. Further, it provides that **no one can be deprived or limited of the right to property**, except when the public interest requires, with just compensation. Natural resources and goods in general use are State Ownership

- When it comes to international treaties and their relation with domestic laws, Article 9 of the Constitution provides that the ratified and published international agreements and generally accepted rules of international law are integral part of the domestic legal order, and they shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the domestic legislation.



- Montenegro is a party to many International Treaties which have the aim to protect environment.
- Most relevant convention for our problem is and **Convention on access to information, public participation in decision making and access to justice and in environmental matters (1998)- Aarhus Convention.**

Aarhus Convention 1998

- Montenegro is a party to the Aarhus Convention, which is **formally binding in Montenegro from 2 February 2010**.
- Convention refers to the concept of "public participation" in the field of the environment.
- The convention aims to ensure that the work of state bodies is public, that there is effective participation of citizens both in the achievement of strategic goals and in actions before their bodies in all decision-making levels, as well as effective legal remedy if any of these rights are violated.



Aarhus Convention 1998

The subject of the Aarhus convention is:

- I. the right of citizens to be informed about the state of the environment;
- II. the right for citizens to participate in the decision-making process on environmental issues;
- III. the right to legal protection of these and other environmental rights.

Article 6 Public participation in decisions on specific activities

The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(a) The proposed activity and the application on which a decision will be taken; (b) The nature of possible decisions or the draft decision; (c) The public authority responsible for making the decision; (d) The envisaged procedure, including, as and when this information can be provided: (i) The commencement of the procedure; (ii) The opportunities for the public to participate; (iii) The time and venue of any envisaged public hearing; (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public; (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and (vi) An indication of what environmental information relevant to the proposed activity is available; and (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

Further, the right to legal protection guaranteed by **Article 9** of the Aarhus Convention contains more components:

1. the protection of the right to access information;
2. the right on administrative procedure and administrative dispute, if the procedure for the right on the assessment of the impact on the environment (provided in Article 6 of the Convention) was not respected;
3. **the right of the public (when it meets the requirements of national legislation) to initiate procedures aimed at environmental protection (against natural persons and public authorities);**
4. the right of the public on adequate and effective legal remedies (including temporary measures), as well as that the costs of the proceedings are not too high and that the decisions of the courts and other bodies are publicly available (whenever possible);
5. **obligation of the contracting parties to: provide information on the possibility of initiating administrative and judicial proceedings and consider the possibility of establishing assistance mechanisms.**

Ownership rights on Sinjajevina

- It is a very difficult task to provide scientific explanation about ownership rights that exist in Katuns in Sinjajevina.
- Sinjajevina is, in terms of the surface area, **the largest highland in Montenegro**, which is administratively divided between municipalities Zabljak, Savnik, Kolasin and Mojkovic, as well as de facto used by people of the municipality of Danilovgrad.
- **Katuns on Sinjejevina are in private property, property from municipality or property from the State.**
- The legal regime for the environment protection depends on the fact whether a parcel in question is private property or State property and on the type of cadastral parcel (whether it is a forest, pasture, meadow, rugged terrain etc).
- Administration for Cadastre and State Property is Body in charge to keep evidence about ownership rights in Montenegro. There is no single Registry of State ownership.
- **Nowadays in cadastral evidence Sinjajevina mountain is separated on total 121 cadastral parcels:**
- **45 parcels which are private property;**
- **76 cadastral parcels which are ownership of the state;**



Katuns which are Private Property

Article 6 of the Law on ownership rights

Ownership is the most complete power over things. The owner has the right to keep his property, to use it and to dispose of it within the limits determined by law. Everyone is obliged to refrain from violating the property rights of another person. Guarantee of ownership right as legal institute implies the duty of lawmaker that, in law-making process, it does not in any way disturb or limit the existence of property rights in the legal order.

Owner is protected, and Government or other public bodies, cannot by individual act, decision or law, deprive the owner of his ownership rights



Article 28 of Law provides that the ownership right can be acquired by law, on the basis of a legal transaction or by inheritance. The right of ownership is also acquired by a decision of a state body, in the manner and under the conditions determined by law.

One of the methods of acquisition by law is usucapion or maintenance (Art. 53)

Acquisitions by usucapion can be regular or extraordinary.

Regular usucapion (Article 53 para.2 of Law)

A conscientious and lawful holder of an immovable property, on which another has the right of ownership, acquires the right of ownership on that property by maintaining it for ten years.

Extraordinary usucapion (Article 54 para. 2 of Law)

A conscientious holder of an immovable thing, on which another has the right of ownership, acquires the right of ownership on that thing by maintaining it for the past 20 years.

The time required for maintenance begins to run from the day the holder entered the possession, and ends on the expiration of the last day of the period required for maintenance. The time required for maintenance also includes the time during which the predecessors of the current holder held the thing as conscientious and lawful holders (or as conscientious holders in case of extraordinary).

*Habitants kept Sentencijas from King Nicholas as a proof of their ownership rights on this land, and as a proof that they used pastures for over a century.

Models of collective private property in Montenegrin Legal system are: co-ownership and common property .

a) **co-ownership** is provided by the art.131-152 of Law on ownership rights.

Several persons have the right of co-ownership on an undivided thing when each person's part is defined in proportion to the whole (aliquot part). If co-ownership parts are not defined, it shall be presumed that they are equal.

Examples of cadastral parcels in co-ownership regime can be found on some parts of the following Katuns: "Planinica" and "Zaboj" in Mojkovac, "Dugi do" in Žabljak.

b) **common property of family** (Articles 310 – 315 of Family Law).

4 types of common property: common property of spouses and common-law partners; common property of family union; property of co-heirs before partition; common indivisible property on common parts of the building;

The principles on which common property is same as for commons - sui generis, archaic form of ownership on pastures.

“When in a family union with married or common-law spouses live with their children and other relatives who work on the agricultural property or jointly perform other activities, or in some other way jointly manage the economy, the property acquired during the duration of that union is the joint property of all members of the family union who are participated in its acquisition. Joint property is managed and disposed of jointly and by agreement by the members of the family union.”

Katuns that are Ownership of State

Article 7 of the Law on ownership rights

The state can be the holder of property rights as other legal and natural persons (dominium). Certain objects of property (natural resources, goods in general use, funds of state bodies, cultural goods) are managed and disposed of by the state, i.e., state bodies and organizations in accordance with the law (imperium). Ownership powers on state-owned items are exercised by the Government of Montenegro, unless otherwise provided by a special law. Ownership powers over state-owned items that serve the realization of the interests and functions of the municipality are exercised by the municipal bodies in accordance with the law and their statute.



- Law on state ownership provides that state ownership on movable and immovable property, securities, money, and other property rights that belong to State or municipality. Purpose of goods in state property is defined by law or by decision of competent authority
- property rights of State can be object of legal transactions as any other. However, natural resources and goods in general use cannot be object of legal transactions.
- No single register for State Property, which makes it more difficult to identify property of State.
- As an examples of Katuns on which cadastral parcels are in State Property: "Ječmen do" and "Potrk" in Kolašin; "Bunarine" and "Muleče (Borova glava)" in Mojkovac; "Podstarac" in Šavnik.





Where does it come from?

Historical analysis



Historical evolution of property rights

1. Early history (- VI) – anarchy, customary law.
2. Middle Ages (VI - XIV) – feudal system, customary law, Duklja/Zeta, Duklja within Raska first Codifications „Codification from tsar Dusan“1349.
3. Early modern period (XIV -XVII) – Montenegro struggles for maintaining independence from Ottoman empire (1496–1878), influence of Islamic Law and couture.
4. Modern history (XVII – XX) – Beginning of legislative work in Montenegro - OIZ mentions commons; Sentencijas from King Nicolas.
5. Montenegro within Yugoslavia, Union Serbia and Montenegro – (XX – 2006)
6. Montenegro since independence (2006 –)



- It is a challenging task to track the development of ownership rights on commons from feudal to tribal, then to ownership of fraternity, village to private property, which is why we need to look into society institutions from old Montenegro: tribe, fraternity, village and household;
- Commons have been an addition to the private property of peasants in villages since immemorial times. Poverty, undevelopment and lack of arable land in the valleys, in general, very mountainous country (Montenegro is the third most mountainous in Europe), were the main reasons for the importance of common property in highlands which could not be held and controlled by one only family due to their great and remote extension, and favoured in particular of the development of pastoralism that is the most productive way of using these areas.
- Pastoralism on Sinjajevina represented commons, and that can be explained through following factors:
 1. Tribal way of living (battles between the tribes);
 2. Pastoralism as one of the main occupation of citizens (poverty);
 3. Configuration and nature of land (caused that commons exist parallel with villagers' ownership of land).
 4. The factual possession of the land and exclusion of every other tribe from that land was the only way to acquire or prove ownership rights. Therefore, collective ownership was a result of the strength and dominance of one tribe over another, not their work.

CHALLENGES

1. Problems with Cadastral evidence

- Lack of accurate data.
- Fact that this land changed its ownership form through history (from commons, to societal property in Yugoslavia and now was transformed to either private or state ownership when Law on ownership rights entered into force in 2009).
- For the purposes of this research study, we compared data from official cadastral evidence which is available online, eKatastar (<https://ekatastar.me>) with the evidences from Geoportal, Interactive web map which provides access to spatial data and terrain situation (<https://geoportal.co.me>).
- Data from these two sources does not match in many cases. **For instance, for Katun Okrugljak the data in Geoportal and eCadastre does not match.**
- Also, data available physically in archives of Regional Cadastral Units, in many cases is not registered or does not match data available online on eKatastar.
- Finally, some parcels that exist on terrain have not been entered in Geoportal or in ekatastar, so they cannot be recognized. **For the part of the territory of the municipality of Šavnik and Žabljak there is still no digitized cadastral data (have not been entered into the Geoportal). Also, in many situations cottages and parcels that exists on terrain are not registred in archives or Reginal Units or on eKatastar.**
- Cottages factually exist on the terrain, but as they fall on State property and not being registered on Geoportal or in cadastre, they are like if they did not exist and like if they did not have no right even if being there for centuries maybe, making that the Government of Montenegro has right of disposal on this land.

2. Military Ground Problems

a) Decision to build military ground was made without consultation of public

- Local people heard about of the decision to build a military ground from the media (usually from television) as well as that they are only pre-heard unverified information from other locals, and to them no state institution, the Government or municipality, did not inform about intentions to build a military training ground. Therefore, they are not even allowed to state their position.
If that was the case and if they were given the opportunity, they all would participated in a public debate where however it was maintained.
- Decision made contrary to provisions of Aarhus Convention
- Government stated that according to Article 6, 1 (c) it may decide, on a case-by-case basis if so provided under national law, not to apply the provisions of Article 6, **to proposed activities serving national defence purposes**, if that State deems that such application would have an adverse effect on these purpose.
- However, certain conditions should be met even in this situation:
 - that it is foreseen by national legislation and
 - if the state considers that the application of the provisions of this member had a negative impact on interests (Art. 6.1(c)).
- **It is not known and publicly available information does not exist, that in the process when deciding on the construction of a military ground was done this test potential-but a negative impact.**

b) Decision made without the existence of publicly available expert analyzes on possible damage to which would come if this one were to be implemented project in the area of Sinjajevina.



- Government states that there was no obligation to assessment of the impact on life environment because it is interest for defense.
- According to the Constitution Montenegro's right to a healthy environment is a human right;
- Constitution stipulates that everyone has the right to be timely and complete notification on the state of the environment;
- when deciding on issues of importance for environment and on the legal protection of these principles; **everyone, but the state, in particular, is obliged to preserve and improve the environment, as well as to protect the natural and cultural heritage.**

3. Wind Power Plant?

- Recently, Government made a public call to give on lease for a period of 30 years land owned by the State of Montenegro in the locality "Sinjajevina" in the Municipality of Kolašin (KO Lipovska Bistrica), on which the construction of a wind power plant/ windmill is planned. The land is leased for the purpose of designing, building, exploiting and maintaining a wind power plant with a minimum installed power of up to 7 MW individually per wind generator.
- On 14 September 2023, Government postponed decision to give on lease.



POSSIBILITIES

1. Declare Sinjajevina a protected area

- The Ministry of Ecology, Spatial Planning and Urbanism proposed that Sinjajevina be a protected area, and the Decision on the military training ground be abolished.
- In July 2022, Ministry announced that the Agency for Environment protection prepared a study on the protection and establishment of protected natural assets in the area of Sinjajevina. In the study, based on data on natural, landscape and cultural values, as well as an assessment of the state of the area, as well as in accordance with the social and economic context and the fact that one part of the researched area is defined as one of the areas within the EMERALD network in Montenegro, the territory "Sinjajevina is proposed for protection in accordance with the provisions of the Law on Nature Protection".
- The study was addressed to local governments, on whose territory Sinjajevina extends: Mojkovac, Kolašin, Danilovgrad, Šavnik and Žabljak.
- Law on Nature Protection states that the proposal should be submitted by local self-governments to the Government, which then decides on the declaration of protection.

By declaring the area of Sinjajevina as a Regional Nature Park, it will be provided legal and professional protection, with natural, landscape and cultural characteristics. This will ensure that, through active management, resources are used on a sustainable basis that can increase the tourist attractiveness of the area and provide benefits to the local population while protecting the elements of the natural values of the area. The category of Regional Nature Park, with its concept of protection, enables the principle and approach of active protection with the possibility of sustainable use of resources.

Also, the proclamation of a protected natural asset will create an institutional framework through the appointment of a responsible management structure as well as a legal framework for the coordination of activities in space.



CONCLUSION



- Generational movement to summer settlements (as we have seen, in Sinjajevina moving to Katuns is tradition since middle ages) created cultural and historical heritage.
- Sinjajevina is largest pasture in Montenegro, and it was used for summer settlement since middle ages, so that has to have implication for territorial planing.
- There is a multi-generational way of life that in agreement with nature and basic source of income for their families.
- Present / inherited / evolution of property and use rights over the land of Sinjajevina by its katunians must be taken into account when planning for a military ground or windmill field.
- For such decisions to be made, Governemt should have consulted local community as it is obligation provided by Aarhus Convention.
- Principle of sustainable development which is achieved by establishing equal weigh between the needs of development and observation environment.

- **WHAT ABOUT PEOPLE** who would be directly affected by the implementation of this decisions?
 - What does the above mean for the **22,000 inhabitants** that live in or close to this areas, for about **250 families** and over 4,000 people who have cottages in Sinjajevina?



Sinjajevina is live off mountain

*"Around Savina water, which is the largest water source on the southwest of Sinjajevina, they never built „katuni“ or huts to be able to save water. **That were those unwritten rules that people respected for centuries**, they fed cattle only for about 20 minutes from where they stayed, while the cattle drink. **They found that place, which people saved and guarded for centuries**, so I don't believe that our ancestors kept it for our government to make a military training ground or a military one shooting range, but people saved it for themselves and for the heirs, for those after them and after us"*

When asked why it should be preserved he answered: *"this is the only one left untouched. They took the sea, they took the rivers, they took it all, they just have to take this from us, **where can we go then?**"*
(Source: Interview with herder from Sinjajevina)

WHAT PEOPLE SAY?





HVALA NA PAŽNJI!

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