



Monitoring of the construction of priority section of the Bar-Boljare highway
(Smokovac - Mateševo section)
2019/2020

ACCESS TO INFORMATION REGARDING DEVASTATION OF THE TARA RIVER

Analysis of the actions of state institutions



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CASE STUDY

Free access to information regarding devastation of the Tara River caused by the highway construction project

The construction of subsection 4.4.1 of the Bar - Boljare highway, section Smokovac - Mateševo, has largely devastated the Tara River through negligent attitude of contractors and competent institutions, which was discovered by NGO MANS in October 2018.¹ The contractor, China Road and Bridge Corporation (CRBC), disposes construction waste generated by drilling of tunnels on the banks of the Tara River, thus endangering its riverbed. On the other hand, the institutions allowed the supporting pillars of the bridges Tara 1 and Tara 2 to be placed in the same riverbed, as well as Mateševo loop.²

In December 2014, the Parliament of Montenegro adopted the Law on Bar - Boljare Highway, thus creating a legal precondition for starting the "project of the century" in Montenegro, as the highway is often called.

Previously, in February that year, the Government of Montenegro concluded the Contract on design and construction of the Bar - Boljare highway, section Smokovac - Uvač - Mateševo, with the Chinese company "China Road and Bridge Corporation" (CRBC). Value of the works is estimated at €809 million, and the financial construction was completed by signing a preferential loan agreement with the Chinese EXIM Bank in October 2014, according to which the Chinese bank will provide 85% of the funds needed for construction, and Montenegro 15%.

The works on the construction of the highway officially started in May 2015, and in addition to the main contractor, the company CRBC, the largest domestic construction companies were also hired according to the contract. The construction of the highway in Montenegro has been the subject of numerous controversies from the very beginning, while the lack of transparency regarding this project has been the subject of a report by the European Commission on the process of Montenegro's accession to the European Union.

Primarily, the precise route of the highway is defined by the Main Design, and the route of the subsection 4.4.1 by the Main Design for that subsection. Both documents were declared secret by the Ministry of Sustainable Development and Tourism, in accordance with the policy of non-transparency pursued by state institutions when it comes to the highway project.³

Thus, until October 2018, the general public was not aware of the fact that a part of the highway will pass through the riverbed of the nationally and internationally protected Tara River, let alone that it will be severely devastated for several years, which is duration of construction of the subsection 4.4.1 which gravitates towards Tara's surroundings near Mateševo, the Municipality of Kolašin.

Because of all this, since the discovery of devastation of the river, NGO MANS has been trying to obtain data on the state of its environment by using the Law on Free Access to Information. Nevertheless, state institutions then begin an unprecedented practice of declaring information on the state of the environment a "business secret", although the right to access information on the state of the environment is guaranteed by

¹ You can read the casw study "Will Tara survive the highway construction" at: <http://www.mans.co.me/en/will-tara-survive-the-highway-construction/>

² Building permit no. 1054-431/10 of 23 June 2017

³ Document of the Ministry of Sustainable Development and Tourism of Montenegro no. 117 / 5-90 / 2 of 20 November 2018

the Constitution of Montenegro.⁴ In addition, Montenegro has ratified the Aarhus Convention, which guarantees the absolute publicity of all information on the state of the environment.⁵

To begin with, at least once a year, the Ministry of Transport and Maritime Affairs, in accordance with the Environmental Impact Assessment Study for the construction of the Bar - Boljare highway, was obliged to publish quarterly reports on quality testing of surface waters - Tara and Morača, that come into contact with the highway construction sites, which has not been done.⁶ These reports were obtained only after special requests for free access to information were sent to Monteput, which resulted in the public being informed that wastewater from the construction site often flows into the Tara River, and that water quality is therefore deteriorating.⁷ Even after this discovery, the Ministry of Transport did not proactively publish the mentioned reports, instead, they must be requested separately - from other institutions.

On the other hand, based on the Law on Free Access to Information, MANS requested from the Ministry of Sustainable Development and Tourism (MSDT) the Main Project of subsection 4.4.1, as well as the Report on its audit, in order to gain insight into how and why the engineers allowed the design of footbridges across the Tara riverbed.⁸ MSDT rejected the request, justifying it by the necessity of protecting the safety of the highway.⁹ However, in the mentioned decisions, MSDT left the possibility of providing an insight into the documentation, without photocopying or copying it, which would not contribute to understanding of this document and revealing who and why allowed the highway to pass through Tara, which contradicts the very principle of free access to information, which in theory encourages state institutions to proactively publish as much information as possible, and not to limit the number of persons who will have access to it. The possibility to access certain information/documents only by physical insight, without the possibility of its further distribution, does not represent free access to information.

Another institution, the Business Unit for the project management of construction of the Bar - Boljare highway of the company Monteput, in one decision refused to submit a number of documents related to the state of the environment of the Tara River:

- CRBC's monthly reports on complaints by the local population, as provided for in the Impact Assessment Study
- CRBC's reports regarding the construction of the subsection 4.4.1
- reports on the implementation of environmental protection measures on the Tara River - where works are being carried out on the construction of the subsection 4.4.1
- reports of Monteput - business unit for the highway, regarding the construction of the subsection 4.4.1
- reports of the consortium Ingerop - Geodata regarding the construction of subsection 4.4.1, which is hired in the project as the supervision/engineer

⁴ Art. 23 paragraph 2 of the Constitution of Montenegro (Official Gazette of Montenegro No. 1/2007 and 38/2013 - Amendments I-XVI)

⁵ See more at: <https://ec.europa.eu/environment/aarhus/>

⁶ p. 388 and 466 of the Environmental Impact Assessment Study of the Bar - Boljare Highway, August 2015

⁷ See more at: <https://www.vijesti.me/eu-vijesti/novi-snimci-mans-a-crbc-otpadne-vode-ispusta-u-pritoku-tare>

⁸ Requests for free access to information no. 124997 and 124988 of October 29, 2018

⁹ MSDT's Decision no. 117/5-86/ 2 and 117/5-117/2 of 20 November 2018, no. 117/5-85/2 and 117 5-91/2 of 20 November 2018

- a program containing mitigation measures of the impact on the Tara River during the construction of the subsection 4.4.1.¹⁰

Photo 1: Part of decision of the Business Unit for project management of the highway rejecting numerous requests for free access to information submitted by MANS

Naime, Zahtjevi podnosioca br. 18/125156 od 31.10.2018. godine; br. 18/125177 od 31.10.2018. godine; br. 125193 od 31.10.2018. godine; br. 18/125238 od 31.10.2018. godine i 18/125254 od 31.10.2018. godine odbijeni su iz razloga što u odnosu na zahtjevane informacije postoji oznaka tajnosti "INTERNO" određena Rješenjuem Ministarstva saobraćaja i pomorstva br. 34/17-01-2229/1 od 07.04.2017. godine.

All these documents were requested due to increased public interest in the situation on Tara, especially in the context of what and how much consequences the works in the vicinity or in the river itself will leave on it. However, the institutions did not find it necessary for citizens to be informed about the state of the environment in one of the most important natural habitats. The bad practice of the institutions was then recognized by the European Parliament, which in its resolution on Montenegro, among other things, stresses *"the need for timely and accurate information on the impact of the highway construction on the river Tara to be made available to a wide public"*.¹¹ However, even the reaction of the relevant international address did not contribute to increasing transparency.

Reports on the implementation of environmental protection measures on the Tara River were also withheld by the Directorate for Inspection Affairs, whose non-transparency was addressed in a special study.¹² Thus, on several occasions and by violating the Law on Free Access to Information and the Law on Inspection Supervision,¹³ the umbrella inspection institution refused to submit the requested reports to MANS, which was already annulled by the Agency for Personal Data Protection and Free Access to Information.¹⁴

The Directorate for Inspection Affairs refused to submit to MANS even the minutes made by the inspector of the Department for Water Inspection precisely at the initiative of NGO MANS, as part of the terrain visit near the construction site on Tara.¹⁵ As part of the response to the initiative for inspection supervision, MANS received information that the inspection visit had taken place, that works had been carried out in accordance with the main project, but not the inspector's report - which could not be obtained through the Law on Free Access to Information.¹⁶

Photo 2: Part of the letter from the Directorate for Inspection Affairs sent to NGO MANS

S tim u vezi, a u skladu sa članom 13 stav 1 tačka 1 Zakona o inspekcijском nadzoru („Sl. list RCG“, br. 39/03, i „Sl. list CG“, br. 76/09, 57/11, 18/14 i 11/15), obavještavamo Vas da je inspektor za vode, u dijelu nadležnost Odsjeka za inspekciju za vode, razmotrio podnijetu inicijativu i izvršio, dana 22. 11. 2018. godine, inspekcijски pregled na licu mjesta kojem su prisustvovali Damir Gutić, direktor Uprave za vode i Vlatko Ćipranić predstavnik izvođača radova CRBC. O izvršenom inspekcijском pregledu sačinjen je zapisnik br. 0304/2018-51.

¹⁰ Decision of the Business Unit for project management of the highway construction of Monteput no. 14843 of 3 December 2018

¹¹ See more at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0482_EN.html

¹² See more at: <http://www.mans.co.me/studija-slucaja-inspekcija-sakrila-informacije-o-nadzoru-radova-na-rijeci-tari/>

¹³ Art. 8 of the Law on Inspection Supervision prescribes publicity

¹⁴ Decision of the Agency for Personal Data Protection and Free Access to Information no. UPII 07-30-101-2/19 of 19 October 2019

¹⁵ Decision of the Directorate for Inspection Affairs no. 0801-03/2018-112/11 of 12 August 2019

¹⁶ Letter from the Directorate for Inspection Affairs no. 0304/2018-8836-2 of 29 November 2018

In this way, MANS is prevented from accessing even the data on inspections that it itself initiated, which illustrates the policy of non-transparency pursued by the competent institutions, which continuously violate international conventions to which they are bound, and deprive their citizens of information on the state of the environment.