



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

ADMINISTRATION FOR INSPECTION AFFAIRS AND HIDDEN INFORMATION ON INSPECTION SUPERVISION

Analysis of the actions of state institutions



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CASE STUDY

Role of the Administration for Inspection Affairs of Montenegro in withholding information related to irregularities on Tara

As a part of monitoring of the process of the construction of priority section of the Bar - Boljare highway, NGO MANS tried to obtain information on whether Montenegrin inspection bodies, unified under the Administration for Inspection Affairs, had found obvious irregularities in the construction of the highway near the Tara River, and if so, what were they and to what extent. Also, MANS tried to find out whether the contractor - Chinese company "China Road and Bridge Corporation" (CRBC), had born any consequences due to devastation of the river caused by the works.

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.

However, the Administration for Inspection Affairs of Montenegro has repeatedly rejected requests for free access to information sent by the NGO MANS, thus violating the Law on Free Access to Information, but also the Law on Inspection Supervision.

Namely, in October 2018, MANS sent four requests for free access to information to the Administration for Inspection Affairs requesting:

- copies of all documents issued by all inspections within the Administration for Inspection Affairs in connection with the construction of subsection 4.4.1 of the highway Bar - Boljare, section Smokovac - Uvač - Mateševo, all under building permit no. 1054-431/10 of 23 June 2017¹
- copies of all records issued by all inspections within the Administration for Inspection Affairs in connection with the construction of subsection 4.4.1 of the highway Bar - Boljare, section Smokovac – Uvač – Mateševo, all under building permit no. 1054-431/10 of 23 June 2017²
- copies of all requests for violations submitted by water inspectors and environmental inspectors of the Administration for Inspection Affairs to the competent courts on the basis of irregularities found on the construction site of subsection 4.4.1 of the Bar - Boljare highway, section Smokovac - Mateševo, in cadastral municipality Jabuka and cadastral municipality Mateševo, Municipality of Kolašin³
- copies of all decisions on imposing of fines stated by the Environmental Inspection Department during inspections on the construction site of subsection 4.4.1 of the Bar - Boljare

¹ Request for free access to information by NGO MANS no. 124986 dated 26 October 2018

² Request for free access to information by NGO MANS no. 124991 dated 26 October 2018

³ Request for free access to information by NGO MANS no. 125172 dated 31 October 2018

highway, section Smokovac - Mateševo, in the area of cadastral municipality Jabuka and cadastral municipality Mateševo, the Municipality of Kolašin.⁴

However, the information that was supposed to provide an insight into the extent to which the inspection bodies deal with the damage to the Tara River was not provided, due to the fact that the Administration for Inspection Affairs rejected all four requests for access to information.⁵

The reason for rejecting the request for free access to information was the assessment of the umbrella inspection institution that "its publication before the end of the project would not be in accordance with the applicable regulations and laws which declared the project a business secret." Namely, the Ministry of Transport and Maritime Affairs, as the investor and project manager, in advance declared the data on the highway secret, which include administrative documents, information on finances, work plans and programs, control documents, information on disputes and technical documentation.⁶ In addition, the Administration for Inspection Affairs, in explaining the reasons for rejecting access to information, stated that harmful consequences would occur for the body (the Administration) and that before the completion of the procedure and taking legal measures, disclosing the requested information would cause harmful consequences greater than prevailing public interest, in terms of Article 17 of the Law on Free Access to Information.⁷ In the end, the Administration rejected all four requests as unfounded.

After that, MANS initiated administrative proceedings before the Agency for Personal Data Protection and Free Access to Information, which ultimately annulled all four decisions, and returned them to the first instance body - the Administration, for a new decision.⁸

However, the Administration for Inspection Affairs issued decisions on rejecting the request in a repeated proceeding as well, this time enclosing a harm test, which allegedly shows that the interest in not providing the requested information is greater than the public interest in gaining insight into it.⁹

In all four cases, MANS again filed complaints with the Agency due to incorrect application of substantive law, incomplete and incorrectly established facts and violation of the rules of procedure. In three out of the four cases, the Agency did not make a decision within the legal deadline, which is why MANS initiated administrative proceedings in those three cases before the Administrative Court of Montenegro due to the silence of the administration.

In addition to violating the Law on Free Access to Information by restricting the public's right to access information of public importance, leading inspection institution also violated the law governing itself - the Law on Inspection Supervision. Namely, Article 8 of the Law on Inspection Supervision reads: *"Inspection supervision is public. When it comes to the protection of life and*

⁴ Request for free access to information by NGO MANS no. 125264 dated 31 October 2018

⁵ Decisions of the Administration for Inspection Affairs on the rejection of the request for free access to information no. UP 0801-03/2018-91/3 dated 20 November 2018, UP 0801-03/2018-104/4 dated 23 November 2018, UP 0801-03/2018-92/3 dated 20 November 2018 and UP 0801-03/2018-94/3 from November 20, 2018

⁶ Decision of the Ministry of Transport and Maritime Affairs of Montenegro no. 34-451/2016-1 dated August 1, 2016

⁷ Law on Free Access to Information (Official Gazette of Montenegro No. 44/12 and 30/2017)

⁸ Decisions of the Agency for Personal Data Protection and Free Access to Information no. UPII 07-30-23-2 / 19 of 20 September 2019, UPII 07-30-47-2/19 of 2 April 2020, UPII 07-30-25-2/19 of 20 September 2019 and UPII 07-30-27-2/19 of 20 September 2019

⁹ Decisions of the Administration for Inspection Affairs no. UP 0801-03/2018-91/13 of 10 October 2019, UP 0801-03/2018-104 /12 of 27 April 2020, UP 0801-03/2018-92/8 of 30 September 2019 and UP 0801-03/2018-94/8 dated 30 September 2019

health of natural persons or serious violation of the public interest, the inspection body shall be obliged to inform the public about the factual situation and irregularities established in the inspection procedure.”¹⁰

In this way, by violating several legal norms, the Administration managed to hide information from the public about the extent to which it controlled compliance with environmental and other standards during the construction of the highway near the Tara River, thus denying the public answers whether inspections ever found any irregularities on that part of the construction site, as well as whether anyone was punished for them.

On the other hand, in the meantime, in the interval between November 2018 and June 2019, MANS once again requested information on the inspection supervision over subsection 4.4.1, which is being built in a UNESCO protected area and where the works are in direct contact with the Tara River. Once again, all documents, all records and all requests for violations that the inspectors submitted to the competent courts due to found irregularities in the construction of the subsection 4.4.1. were requested.¹¹

In these cases as well, the Administration for Inspection Affairs issued identical decisions as before and refused to submit the requested data, once again violating the Law on Free Access to Information, as well as the Law on Inspection Supervision.¹²

In the meantime, even after the administrative proceedings conducted before the Agency for Personal Data Protection and Free Access to Information, which annulled two of the last three decisions of the Administration, the first instance body - the Administration still issued the same decisions refusing access to information on the devastation of the Tara River.¹³

In this way, the body that unites all inspections, in an unprecedented way endangers the public interest by withholding information about whether CRBC, the contractor on the highway route near Tara, was ever punished for the environmental damage it caused to the internationally protected river.

Photo no. 1: Harm test attached to the latest decision of the Administration for Inspection Affairs of Montenegro

¹⁰ Article 8 of the Law on Inspection Supervision (“Official Gazette of the Republic of Montenegro”, No. 39/2003 and “Official Gazette of Montenegro”, No. 76/2009, 57/2011, 18/2014, 11/2015 and 52/2016).

¹¹ Requests for free access to information by NGO MANS no. 128497, 128517 and 128532 dated 24 June 2019

¹² Decisions of the Administration for Inspection Affairs no. UPII 0801-03/2019-51/5 dated 19 August 2019, UP 0801-03/2019-50/7 dated 19 August 2019 and UP 0801-03/2019-49/7 dated 19 August 2019

¹³ Decision of the Administration for Inspection Affairs no. UP 0801-03/2019-50/15 dated 22 April 2020

TEST ŠTETNOSTI**Informacija:**

Kopiju svih zapisnika koje su inspekcije u okviru Uprave za inspeksijske poslove donijele u vezi sa izgradnjom poddionice 4.4.1 autoputa Bar-Boljare, dionica Smokovac – Uvac-Mateševo, na području KO Jabuka i KO Mateševo, Opština Kolašin, a sve po građevinskoj dozvoli br.1054-431/10 od 23.06.2017.godine, donešenih nakon novembra 2018.godine.

Uprava za inspeksijske poslove je utvrdila da postoje razlozi za ograničavanje pristupa navedenoj informaciji i to iz člana 14 stav 1 tačka 4 alineja 1 Zakona o slobodnom pristupu informacijama, prema kojim odredbama organ vlasti može ograničiti pristup informaciji ili dijelu informacije, ako je to u interesu vršenja službene dužnosti, radi zaštite od objelodanjivanja podataka koji se odnose na planiranja inspeksijske kontrole i nadzora od strane organa vlasti, iz razloga što bi objavljivanje tražene informacije prije završetka projekta izgradnje autoputa Bar-Boljare ugrozilo planiranje i dalje vršenje inspeksijskog nadzora.

Imajući u vidu navedeno, objavljivanje tražene Kopiju svih zapisnika koje su inspekcije u okviru Uprave za inspeksijske poslove donijele u vezi sa izgradnjom poddionice 4.4.1 autoputa Bar-Boljare, dionica Smokovac – Uvac- Mateševo, na području KO Jabuka i KO Mateševo, Opština Kolašin, a sve po građevinskoj dozvoli br.1054-431/10 od 23.06.2017.godine, donešenih nakon novembra 2018.godine, u konkretnom slučaju značilo bi ugrožavanje planiranja inspeksijske kontrole i nadzora od strane organa vlasti, iz kojeg razloga je procijenjeno da bi objavljivanje tražene informacije izazvalo štetne posledice po interes koji je od većeg značaja od interesa javnosti da zna navedenu informaciju.

 **DIREKTOR**
Alja Košuta