



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

FORGOTTEN WORKS AND (NON)PROCESSING OF RESPONSIBLE PERSONS

Analysis of the actions of state institutions



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Forgotten works and indolent attitude of the State Prosecutor's Office towards the responsible persons

It was certain already in March 2019, two months before the planned deadline for completion of the priority section of the Bar - Boljare highway, Smokovac - Mateševo, that the works on the completion of the section would be delayed by at least a year. The Minister of Transport and Maritime Affairs, Osman Nurković, also announced this in October 2018 participating in the conference organised by the NGO MANS, dedicated to the highway.¹

It was evident back then that responsible officials, when agreeing on details of the construction of the highway, forgot to include the construction of the Smokovac loop, which is the only connection between the capital of Podgorica and the highway in this phase.² In addition, the Ministry of Transport and Maritime Affairs, which on behalf of the Government of Montenegro concluded the Contract on design and construction of the first section of the highway, which was then headed by Ivan Brajović, did not include works on construction of the water supply system and electricity network for the needs of the first section of the highway.³

However, the representatives of competent institutions claimed for months that nothing was "forgotten", but that the contract also envisaged subsequent works worth 10% of the agreed price of €809 million.⁴

¹ See more at: <http://www.rtcg.me/vijesti/ekonomija/218248/izgradnja-ce-kasniti-kvalitet-prioritet.html>

² See more at: <https://www.vijesti.me/vijesti/ekonomija/zaboravljena-petlja-kostace-nas-jos-30-miliona>

³ See more at: <https://www.vijesti.me/vijesti/ekonomija/ministarstvo-na-celu-sa-brajovicem-ostetilo-drzavu-za-134-miliona-eura>

⁴ [26] Sub-clause 13.9 stating that the value of indicative amounts of unforeseeable and subsequent works cannot exceed 10%. Total number is €809,577,356.14 of the maximum guaranteed price referred to in paragraph 1, Article 4 of the Draft Contract.

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.

Consequently, at the session held on April 25, 2019, the Government of Montenegro determined the Draft Contract on design and construction of the first phase of the Smokovac Loop, worth over €30 million.⁵

After that, at the session held on May 9, 2019, the Government also determined the Contract on design and construction of the water supply system for the first section of the highway, worth €14 million.⁶

Both contracts, under the premise that these were subsequent and not forgotten works that fall within 10% of the agreed price, were signed with the CRBC company by the Minister of Transport and Maritime Affairs, Osman Nurković.⁷ It is interesting that the company "Bemax", domestic subcontractor in the construction of the highway hired for most works with previously agreed works worth €237 million, announced that it would build the Smokovac loop in April 2019, two months before signing the contract.⁸

In addition, the subsequent works include the first phase of electrification of the highway, i.e. installation of cable canalization on the open route and Moračica bridge, which is carried out by CRBC, worth €4,830,000.⁹

However, so far, additional €50 million have been allocated, in addition to the amount that will be spent on forgotten Phase I of the Smokovac loop, the water supply system and Phase I of electrification.¹⁰ It is about temporary supplying of the highway with electricity, for which CRBC has already been paid €11

million.¹¹ Furthermore, €38 million was allocated for the second phase of the highway electrification, which was not covered by the basic contract. The job of building the second phase of the electricity network for the needs of the highway was taken over by the state company "Monteput", which is not on the list of CRBC's subcontractors, which is why the amount envisaged for VAT is included in the price of €38 million.¹² Companies "Novi Volvox" and "Electro - team" LLC Budva were the only ones to apply to the tender of Monteput for this

⁵ Conclusion of the Government of Montenegro no. 07-1749 dated 25 April 2019. The exact number is € 30,456,569

⁶ Conclusion of the Government of Montenegro no. 07-1822 dated 16 May 2019. The exact number is € 14,203,431

⁷ See more at: <http://www.minsaob.gov.me/vijesti/199189/SAOPsTENJE-POVODOM-POTPISIVANJA-PRIOLOGA-UGOVORA-O-PROJEKTOVANJU-IZGRADNJI-DIONICE-SMOKOVAC-MATESEVO-AUTOPUTA-BAR-BOLJARE.html>

⁸ See more at: vijesti.me/vijesti/ekonomija/bemax-najavio-da-gradi-petlju-smokovac-prije-dogovora

⁹ Conclusion of the Government of Montenegro no. 07-2018 of 23 May 2019. The amount defined by the contract is € 4,830,000 and belongs to the 10% of the maximum guaranteed amount of € 809,577,356.14.

¹⁰ By these works we mean all works that have been performed or will be performed, and their payment is independent of the maximum guaranteed price of € 809,577,356.14.

¹¹ The exact number is € 10,999,900

¹² See more at: vijesti.me/vijesti/ekonomija/struja-za-auto-put-kostace-jos-sedam-miliona

job, while Monteput took a loan from the state Investment and Development Fund (IDF) to finance these works.¹³

Finally, additional works that will require more money from the state budget even beyond the planned amount will be necessary for the construction of connecting roads on Veruša and Mateševo, which are currently estimated at around five million Euros.¹⁴

Due to all the above and suspicion that the state budget was damaged by at least €134 million, which is the price of subsequent works estimated in March 2019 even before the signing of the annex to the contract relating to them, on March 22, 2019, NGO MANS filed a criminal complaint with the Supreme Prosecutor's Office of Montenegro against Ivan Brajović, former Minister of Transport and Maritime Affairs, who signed the basic contract on the design and construction of the highway, but also against other executive officials who participated in the same case, due to suspicion of abuse of office.¹⁵

Brajović, together with other officials, is charged with abusing his office in the process of preparing and contracting this job by not envisaging additional works, which is why the priority section of the highway will cost much more than agreed - 1.3 billion instead of 809 million Euros. In addition to described forgotten works, the enormous difference in price will be caused by the exchange rate difference - considering that the loan from the Chinese EXIM bank for the needs of the construction of the highway was taken in dollars, as well as the interest. Moreover, the complaint states that the construction of the highway was contracted on the basis of the conceptual design and with poor geodetic bases. By May 2020, the competent State Prosecutor's Office has not responded to this complaint, and the public has no information whether any action has been taken on it.

On the other hand, in late December 2014, after the adoption of the Law on the Highway, MANS also filed criminal complaint with the Supreme State Prosecutor's Office against Ivan Brajović, the then Minister of Transport and Maritime Affairs, and Radoje Žugić, who was then the Minister of Finance. The complaint was filed due to the suspicion that, as responsible persons, by concluding contractual engagements with the Chinese company CRBC and EXIM Bank, they brought Montenegro into a subordinate and dependent position towards another country, in an unconstitutional manner and with severe abuse of official position, for which a prison sentence of three to fifteen years, i.e. six months to twelve years is envisaged.¹⁶

The complaint with the State Prosecutor's Office states that the contract on design and construction was concluded on the basis of a preliminary design, not the main one, which leads to a well-founded suspicion that the agreed price of €809 million is not a realistic price, which turned out to be true, and that, despite that knowledge, the reported persons knowingly acted to the detriment of the interests of Montenegro. In addition, various benefits in the form of exemption from VAT, excise tax, customs tax, income tax of employed foreigners, income tax

¹³ Decision of the Monteput rejecting the request for free access to information of the NGO MANS, no. 3609 of 12 June 2019

¹⁴ See more at: <https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2018-09-25&clanak=664334>

¹⁵ Criminal complaint of NGO MANS no. 25221/03 of 22 March 2019. See more at: <https://www.mans.co.me/krivicna-prijava-protiv-brajovica-zbog-zaboravljenih-radova-na-autoputu/>

¹⁶ Art. 357 and 416 of the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro, No. 70/2003, 13/2004 - amended and 47/2006 and Official Gazette of Montenegro, No. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - amended, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020). See more at: <https://www.mans.co.me/krivicna-prijava-protiv-zugica-i-brajovica-zbog-autoputa/>

of the main contractor, social security contributions of employed foreign persons with the contractor, as well as fees for stone exploitation, are problematized.

It is particularly disputable that the loan with EXIM bank was concluded in Dollars instead of Euros - the official currency in Montenegro. Thus, Montenegro and its finances are constantly exposed to the currency risk of changes of US dollars in relation to Euro, which can cause repayment of loans in a larger amount than 943,991,500.00 US dollars, especially when taking into account the long repayment period of 168 months. Finally, the complaint indicates that Žugić and Brajović were acquainted with the study of the British consulting company "URS", which in 2012 showed that the project of building this section of the highway is not economically viable.¹⁷

Photo 1: Part of the decision on rejection of the criminal report from June 2015

Obavještavam vas, kao podnosioca, da sam odbacio vašu krivičnu prijavu br.20778/12 od 26.12.2015. godine, podnijetu protiv Brajović Ivana i Žugić Radoja, zbog krivičnih djela zloupotreba službenog položaja iz člana 416 stav 3 u vezi stava 1 i ugrožavanje nezavisnosti iz člana 357 Krivičnog zakonika;

-jer u radnjama prijavljenih nema bitnih elemenat bića krivičnih djela za koja se prijavljuju, a niti elemenata nekog drugog krivičnog djela za koje se goni po službenoj dužnosti.

However, back in June 2015, the described complaint was rejected by the acting prosecutor, without explanation and in a arbitrarily, which means that the prosecution already took an indolent attitude towards the "project of the century", which years later is costing Montenegrin citizens hundreds of millions of Euros more than planned.¹⁸

¹⁷ See more at: <https://www.vijesti.me/vijesti/ekonomija/autoput-za-nigdje-udavio-crnu-goru>

¹⁸ Decision of the Supreme State Prosecutor's Office no. 3/15 dated 15 June 2015