

ROAD WITHOUT END



Fourth report on the construction of the Bar - Boljare Highway



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Abstract

Loan - Previous costs of the loan of the Chinese "Exim Bank" for the first section of the highway were at least € 45 million. The first instalment of over 40 million dollars is to be paid next year. If it estimates that there have been significant changes to the project or that the state may have problems repaying the loan, that bank can immediately request payment of the full loan with interests. Completion of the construction of the first section has been delayed several times, and the pandemic has led to further delays.

Costs - By the end of August 2020, the costs of construction, expropriation, supervision and management that have been paid since the beginning of the construction of the highway amounted to at least € 690 million. CRBC was paid over € 645 million, foreign consultants over € 20 million; around six million was allocated for three state commissions, and over five million for "Monteput". An additional € 18 million was spent on land expropriation.

Additional works - Over € 100 million will be allocated for additional and subsequent works that were not provided for in the Contract, and they include electrification and water supply of the highway, as well as works on connecting roads and loops Smokovac, Veruša and Mateševo.

Subcontractors - Subcontractors contracted works worth almost €420 million. Thus, they will be paid more than half of the agreed price for the construction of the first section. "Bemax" contracted most works worth over € 240 million, more than all other subcontractors together.

Subsidies - From the beginning of the construction of the highway to the end of June 2020, over € 225 million worth of subsidies was paid to CRBC and subcontractors. That amount does not include taxes and contributions on wages paid in China, or the value of building blocks, of which there is no information at all.



Abstract

Employment - On average, around two thousand employees worked on the construction of the highway, while last year, around 1.2 thousand employees were hired. Foreigners make up two-thirds of CRBC employees, the state paid € 295 million in the last four years for their wages, and around five million Euros was paid to domestic employees. On average, foreign employees had six times the salary of domestic employees in 2019.

Environment - Two years since it was discovered that CRBC has been devastating the Tara River, an area under the special protection of the UNESCO programme "Man and the Biosphere", there has been no reaction from the competent institutions.

Inspections - Data on controls of contractors and subcontractors and fines imposed, which were previously available to the public, have been declared secret by inspections.

Transparency - The Administrative Court has drastically changed the practice in highway-related cases, thus even more information is withheld from the public.

Other projects - Spatial and Urban Plan of Kotor, town under the protection of UNESCO, was adopted, which contains solutions contrary to the recommendations of that organization. Plans for the Lake Skadar still contain controversial solutions. Property issues related to Salina Ulcinj are still unresolved. The construction of the second block of the Thermal Power Plant was abandoned, and the plans for Buljarica have not been implemented.



Introduction

In 2014, the Government of Montenegro signed a contract with Chinese company China Road and Bridge Corporation (CRBC) to design and build the first out of three planned sections of the Bar-Boljare highway. The construction of this section of the highway is financed by a loan from the Chinese EXIM Bank through a special programme of the Chinese Government, dedicated to the countries of Central and Eastern Europe.

This project was approved by the Parliament of Montenegro, which adopted a special Law on the Bar-Boljare Highway and envisaged a series of subsidies during its implementation.

Works on the first section started in May 2015 and the deadline for completion was four years. This deadline has been extended by one year, thus, completion of the works was expected in September 2020. The works have been additionally postponed due to the pandemic, and the new deadline is unknown to the public, as well as who will bear the consequences due to the delay, which increases the price of the loan and delays the economic valorisation of the project.

In the meantime, it turned out that there were numerous unforeseen and additional works that are necessary in order to put that section into operation, so the price of one of the most expensive highways in the world has been further increased.

Tara River, which is under international protection, has been devastated during the construction of the highway. The European Parliament, the European Commission, UNESCO and numerous international and local organizations have indicated that the problem of Tara River devastation must be addressed.

However, there has been no progress, and less and less information on the construction of this significant infrastructure facility is available to the public. Representatives of the executive authority and other institutions responsible for highway control and supervision persistently ignore all calls from civil society for public dialogue.

This document provides an overview of publicly available data on highway construction financing, government subsidies given to the contractor and subcontractors, as well as additional and subsequent works contracted so far.

Special chapter contains information on Montenegrin companies engaged in the highway construction, as well as the effects that the project has on employment.

Issues with access to information have been documented through case studies that also contain court practice review.

The last part of the document provides information on other major projects that have significant environmental impact, such as planned construction of the second block of Thermal Power Plant in Pljevlja, as well as construction in the area of Ulcinj Salina, Buljarica, Skadar Lake and protected area of Kotor.



EXIM Bank loan

During the grace period, at least € 45 million was paid based on loan costs for interest on disbursed loan amounts, interest on undisbursed loan amounts, loan-processing fees, currency conversions and bank fees.

During the next year, the state will have to pay 43.2 million Dollars to the Chinese "Exim Bank" for the first instalment of the highway loan.

Chinese state bank may immediately request payment of the full loan with interest, if it finds that there have been significant changes to the project or that the state may have problems repaying the loan. Completion of the construction of the first section has been delayed several times, and the pandemic has led to further delays. Montenegrin government has accepted that the agreement be interpreted in accordance with Chinese law, and that possible arbitration be conducted in Beijing.

LOAN REPAYMENT

During the next year, the state will have to pay 43.2 million Dollars to the Chinese "Exim Bank" for the first instalment of the highway loan.

The loan repayment schedule [1] shows that the first instalment is due on July 21, 2012, and the last one on January 21, 2035. Every six months, we will pay around \$ 33.7 million to repay the principle, plus the amount of interest.

According to the agreement between the Government and Exim Bank [2], for a loan of around 940 million dollars [3], we will pay over one billion and eighty million dollars in 28 semi-annual instalments. [4] In other words, we will pay around 140 million dollars for interest alone, not counting the costs of currency conversion.

The loan agreement stipulates that the Chinese state bank can immediately request the payment of the complete loan with the corresponding interest, if it estimates that there have been significant changes to the project or that the state may have problems with repaying the loan.

This Agreement provides for cases in which it is considered that the obligations have not been met. [5] This article states, among other things, that not meeting of obligations implies significant changes to the project or changes on behalf of the Government of Montenegro, which, according to Exim Bank, may have an adverse effect on the state's ability to repay the loan:

"significant changes have occurred in relation to the Project or the Borrower, which, in the opinion of the Lender, may have a material adverse effect on the Borrower's ability to meet its obligations under this Agreement". [6]

[1] On the basis of the Law on Free Access to Information, MANS requested from the Ministry of Finance a copy of the loan amortization schedule with the Chinese EXIM bank, request number 19/129027, dated 19.09.2019

[2] On October 30, 2014, the Ministry of Finance, on behalf of the Government of Montenegro, and the Chinese Exim Bank signed a preferential loan agreement for the project of construction of the Bar - Boljare highway, Smokovac - Mateševo section.

[3] Costs during the grace period are not included.

[4] The agreed interest rate is 2%, commission for undisbursed loan amounts is 0.25%, the loan was obtained with a grace period of 72 months, while during the grace period, interest and commission for undisbursed loan amounts is 0.25%.

[5] Article 7 of the Preferential loan agreement for the project of construction of the Bar - Boljare highway, Smokovac - Mateševo section.

[6] Ibid, item 7.1 (5)



EXIM Bank loan

Should any of the cases listed in that article of the Agreement occur, Chinese state bank can request that Montenegro immediately repay the full amount of the loan along with interest and other costs:

“...cease to pay the arrangement, and/or declare all principal and accrued interest and any other sums which are to be paid under this contract currently due for payment, without further notice or other legal formalities of any kind.” [7]

Montenegrin government has accepted that the agreement be interpreted in accordance with Chinese laws, and that possible arbitration be conducted in Beijing.

The loan agreement states:

“The Borrower hereby irrevocably waives any immunity on the grounds of sovereign or otherwise for itself and its property in connection with any arbitration proceeding pursuant to Article 8(5), thereof with the enforcement of any arbitral award pursuant thereto, except for the military assets and diplomatic assets.” [8]

“This Agreement, as well as the rights and obligations of the parties under this Agreement, shall be governed by and construed in accordance with the laws of China.” [9]

The agreement stipulates that the arbitration will be conducted in Beijing, before the China International Economic and Trade Arbitration Commission (CIETAC). [10]

[7] Ibid, item 7.3
[8] Ibid, item 8.1
[9] Ibid, item 8.4
[10] Ibid, Article 8.5



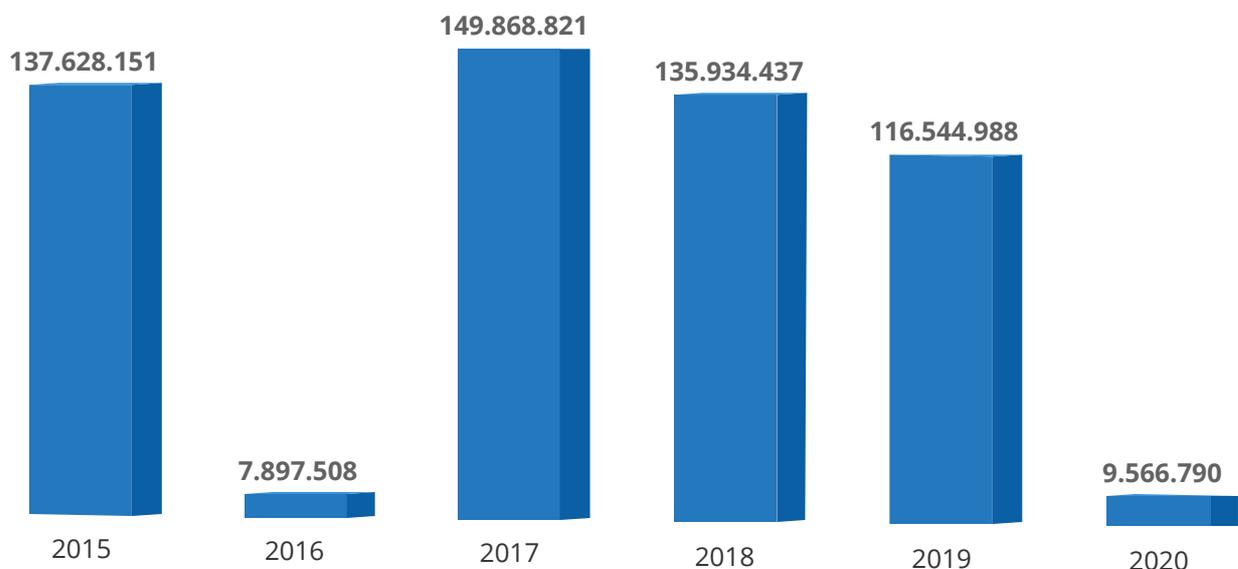
EXIM Bank loan

LOAN DISBURSEMENT RATE

In the first half of 2020, four times less funds were disbursed from Exim Bank loan compared to the same period last year.

By the end of June 2020, Montenegro disbursed approximately €557 million of the loan from EXIM Bank, i.e. around 765 million US dollars [11] for the purpose of construction of the highway (Graph 1 and Photo 1). The Ministry of Finance disburses funds from this loan at a rate determined by the contractor. CRBC sends a request to the Ministry of Finance, which then sends a request for disbursement of funds from EXIM Bank.

Loan disbursement rate, by years (in Euros)



Graph 1: Disbursement of money from the loan with Chinese EXIM Bank by years. Source: Ministry of Finance.

In 2015, nearly €140 million was disbursed, and this money was also used in the following period, so in 2016 only around € 8 million was disbursed. In 2017, just under € 150 million was disbursed, while in the following two years, around € 136 and 116 was disbursed.

By the end of June 2020, only around € 9.5 million was disbursed, while in the first six months of last year, over € 43 million was disbursed.

[11] The money is paid in the agreed exchange rate EUR/USD 1.3718.



EXIM Bank loan

THE EXPORT-IMPORT BANK OF CHINA
TABLE OF DISBURSEMENTS
 (Concerning the Preferential Buyer Credit Loan Agreement
 No. (2014) 31TOTAL NO. (325))

(Amounts expressed in US\$)

Date of Disbursement	Amount Disbursed	Outstanding Balance	Remarks
2015-4-29	94,399,148.46	94,399,148.46	
2015-6-25	94,399,148.46	188,798,296.92	
2016-11-10	2,101,380.73	190,899,677.65	
2016-12-16	3,134,882.20	194,034,559.85	
2016-12-27	5,597,537.87	199,632,097.72	
2017-3-17	6,611,235.31	206,243,333.03	
2017-4-21	5,935,632.15	212,178,965.18	
2017-6-20	21,350,012.35	233,528,977.53	
2017-8-3	18,575,856.88	252,104,834.41	
2017-8-18	16,640,988.73	268,745,823.14	
2017-9-22	16,464,151.49	285,209,974.63	
2017-10-19	26,694,528.23	311,904,502.86	
2017-11-22	36,890,212.42	348,794,715.28	
2017-12-27	32,276,840.19	381,071,555.47	
2017-12-28	24,150,591.08	405,222,146.55	
2018-3-13	6,400,859.77	411,623,006.32	
2018-4-4	20,346,635.95	431,969,642.27	
2018-4-20	13,302,831.55	445,272,473.82	
2018-5-23	9,283,817.34	454,556,291.16	
2018-6-20	19,678,717.95	474,235,009.11	
2018-7-24	16,808,542.22	491,043,551.33	
2018-8-24	17,713,805.15	508,757,356.48	
2018-9-28	18,929,783.86	527,687,140.34	
2018-10-31	20,466,665.09	548,153,805.43	
2018-11-23	18,406,517.69	566,560,323.12	
2018-12-25	25,136,684.00	591,697,007.12	
2019-1-8	32,954,537.20	624,651,544.32	
2019-3-7	12,613,486.09	637,265,030.41	
2019-3-28	4,395,924.94	641,660,955.35	
2019-4-23	6,738,564.68	648,399,520.03	
2019-5-24	7,191,979.58	655,591,499.61	
2019-6-28	7,854,729.51	663,446,229.12	
2019-8-2	9,466,549.41	672,912,778.53	
2019-8-23	30,327,212.99	703,239,991.52	
2019-9-25	9,718,811.53	712,958,803.05	
2019-10-30	8,970,658.12	721,929,461.17	
2019-11-28	10,670,251.77	732,599,712.94	
2019-12-24	18,973,709.24	751,573,422.18	
2020-3-10	4,336,305.77	755,909,727.95	
2020-4-3	1,166,030.00	757,075,757.95	
2020-4-24	1,166,030.00	758,241,787.95	
2020-6-2	1,166,030.00	759,407,817.95	
2020-6-24	5,289,326.85	764,697,144.80	
Total:	764,697,144.80		

Photo 1: Loan disbursements in dollars, ending with June 2020. Source: Ministry of Finance.



EXIM Bank loan

COSTS DURING THE GRACE PERIOD

At least € 45 million was paid based on loan costs with China's Exim Bank. By the end of July 2020, around 37 million was paid for interest costs on disbursed and unpaid amount, over 6 million was allocated for the costs of undisbursed funds, while around two million Euros was paid for the loan-processing commission.

According to the agreement with Exim Bank, the Government is obliged to pay interest on disbursed and unpaid amount of principal under this Agreement at the rate of 2% per annum [12], as well commitment charge, i.e. commission on undisbursed loan amounts of 0.25% per annum. [13] Additionally, a processing fee is paid at the rate of 0.25%. [14]

In 2015, around two million Euros was paid for loan processing. From that year, semi-annual payments of interest and costs of undisbursed loan amounts began, followed by the costs of conversion and commission of the Central Bank of Montenegro (CBCG), which are paid in semi-annual instalments.

Interest costs on the disbursed and unpaid amount of principal rose sharply, thus at least € 37 million was paid by the end of July this year. Costs for undisbursed funds have been decreasing since 2017, totalling around € 6.2 million. Based on the costs of conversion, around € 200 thousand was paid, and around 90 thousand was paid for the commission of CBCG.

The Ministry of Finance did not publish data on payments from the state budget in January this year, so data on that instalment are not publicly available, but conservative estimates of amounts have been made based on previous payments and agreed interest rates.

Year	Loan processing fee	Interest instalment	Costs of undisbursed loan amounts	Currency conversion	Fee to CBCG
2015.	2,088,515.98	527,489	354,482	10,400	5,924
2016.		3,504,486	1,745,628	26,184	10,474
2017.		3,663,358	1,698,464	26,809	10,724
2018.		6,335,231	1,212,163	37,737	15,095
2019.		10,549,043	788,662	56,689	22,675
2020.		13,000,000 *	400,000 *	65,000 *	25,000 *
TOTAL	2,088,516	37,579,607	6,199,400	222,819	89,892

* Data for January 2020 are not available, thus, estimates are given.

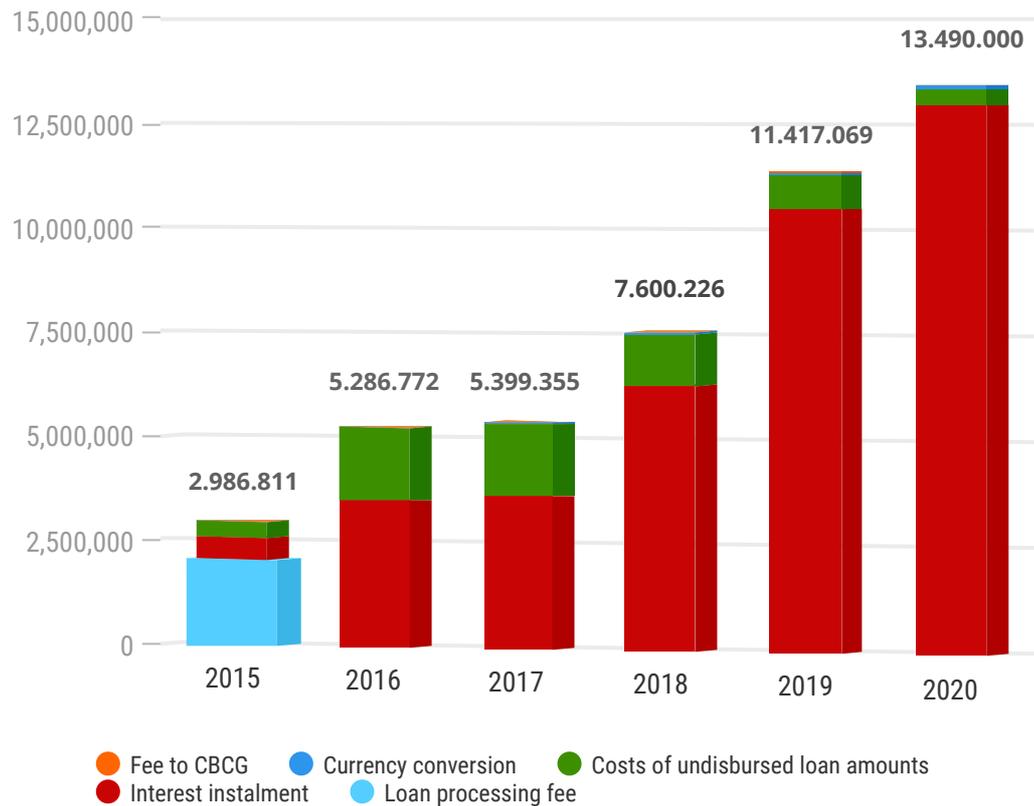
Table 1: Overview of loan costs in Euros according to the type of expenditure, by years.
Source: Ministry of Finance

[12] Items 2.2 and 4.2 of the Preferential Loan Agreement for the Buyer for the Bar-Boljare Highway Construction Project, Smokovac-Mateševo section
[13] Ibid. Items 2.2. and 2.7
[14] Ibid. Item 2.2.



EXIM Bank loan

Paid costs of the loan, by types, by years



Graph 2: Paid costs of the loan by the end of July 2020, by types, in Euros. Source: Ministry of Finance

MANS asked the Central Bank for information on financial institutions where the money is converted, but this information was declared a banking i.e. business secret. [15] The Ministry of Finance claims that it has no information where CBCG converts money and under what conditions. [16]

[15] MANS' request number 19/128331, request date 12/06/2019

[16] MANS' request number 19/128763, request date 08/08/2019



Costs of construction, supervision and expropriation

The costs of construction, expropriation, supervision and management, which were paid from the beginning of the construction of the highway until the end of August 2020, amounted to at least € 690 million. CRBC was paid over € 645 million, of which 535 million from loans, and around 110 million from the state budget.

The costs of supervision agreed with foreign consultants are over € 20 million, while at least € 6 million was spent for three state commissions, and over € 5 million for the work of "Monteput" which performs supervision works. Over € 18 million was spent on expropriation of land for highway construction.

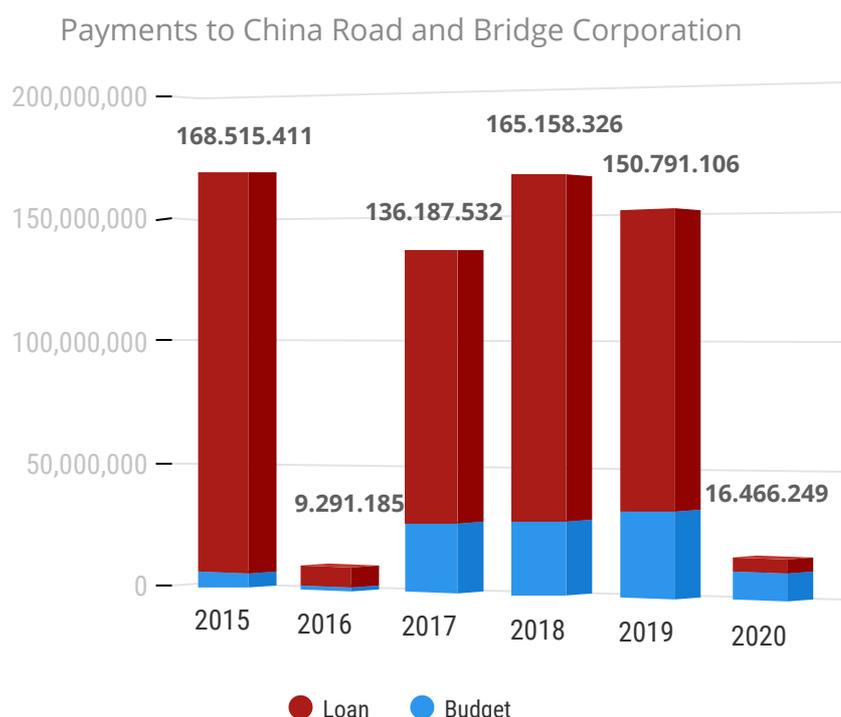
From 2014 to the end of August 2020, the total costs of construction, expropriation, supervision and management amounted to over € 690 million.

CONSTRUCTION COSTS

According to publicly available data, from the beginning of the construction of the first section of the highway until the end of August 2020, CRBC was paid around € 645 million. [17] Around € 535 million was paid from the funds provided through the loan, and around €110 million from the state budget. [18]

According to data provided to MANS by the Ministry of Finance, CRBC was paid most money in 2015, around €169 million, and only around nine million Euros in 2016. In 2017, around € 136 million was paid, around 165 million in 2018, and around 150 million in 2019.

From February to the end of August [19] this year, more than € 16 million was paid to CRBC, while in the same period last year, over € 100 million was paid to that company.



Graph 3: Payments to CRBC, by years, ending with August 2020. Source: Ministry of Finance

[17] The data are taken from the Ministry of Finance's response to requests for information related to complete budget spending in the period from 2015 to August 2020, as well as from the special request for information related to payments to CRBC in January 2020 for which transactions from the budget are not publicly available

[18] The construction of the highway is financed with 85% of the funds from the loan, and 15% from the budget of Montenegro.

[19] Data for January 2020 are not available



Costs of construction, supervision and expropriation

However, only part of the information on construction, supervision and management costs is available to the public, while institutions often publish contradictory data.

For example, in response to a parliamentary question, the Ministry of Finance stated that by the end of April 2020, € 706,6 million had been paid to CRBC, of which subcontractors received € 459,5 million. [20]

Previous reports [21] pointed to inconsistencies in the data provided by the Ministry of Finance to MANS based on requests for information. For example, the Ministry claimed that in January 2019, there were no payments to CRBC at all, although data on all budget payments showed that over € 24 million was transferred to that company in that period. In addition, data for 2017 differed by 40 million, while for 2018, they differed by 60 million.

SUPERVISION COSTS

Foreign consultant

Supervision costs of around € 20 million have been agreed with foreign consultants, but only payments to a subsidiary in Montenegro of around seven million Euros are known.

Supervision over the implementation of highway works is carried out by the French - Italian consortium with which the Ministry of Transport and Maritime Affairs signed a contract worth over €20 million. [22] For the needs of the project, the consortium established a company in Montenegro called Ingerop MN LLC, which during the project should be paid around € 6.1 million without VAT, while the remaining 12.8 million, also without VAT, will be paid to "Ingerop Conseil Et Ingenierie" based in France. [23]

MANS has repeatedly tried to obtain information on budget payment towards Ingerop Conseil Et Ingenierie, but the Ministry of Finance claims that it does not have information on these payments, while the Ministry of Transport and Maritime Affairs has not responded to our requests. [24]

[20] <https://www.vijesti.me/vijesti/ekonomija/449587/za-auto-put-isplaceno-706-miliona-oprosteno-dazbina-225-miliona>

[21] Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 2; <http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>

[22] On September 11, 2014, the Ministry of Transport and Maritime Affairs signed a contract for consulting services with the French - Italian consortium "Ingerop Conseil & Ingenierie - Geodata Engineering S.p.A.". This contract foresees providing of consulting services to supervise the design of project documentation and performing of works on the construction of the Bar - Boljare highway, sections Smokovac - Uvač - Mateševo, based on the design contract. The contract stipulates a service price of € 22.6 million (gross amount), of which the net amount is approximately € 19 million and VAT is € 3.6 million.

[23] Contract for Consulting Services between the Ministry of Transport and Maritime Affairs and Ingerop Conseil & Ingenierie - Geodata Engineering S.p.A.

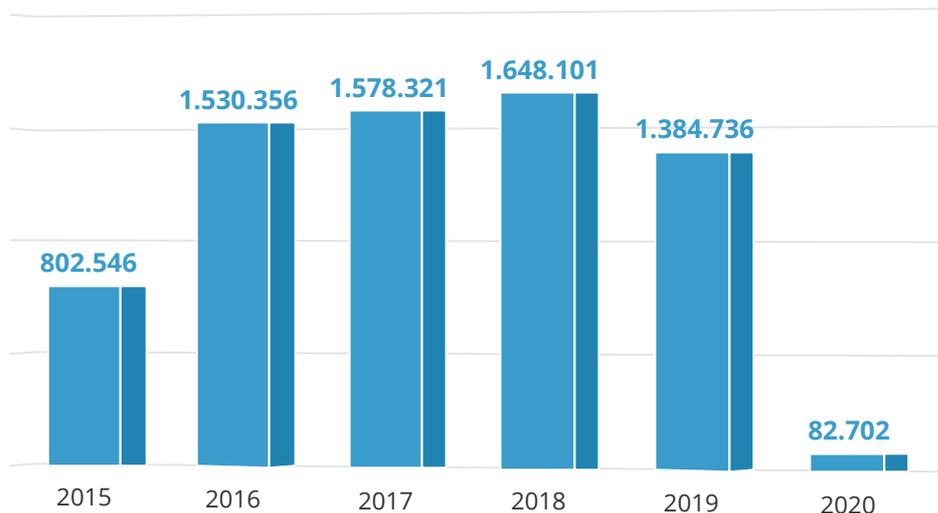
[24] MANS' Request Numbers: 18/118049-118051 (29.01.2018), 18/118392 (09/02/2018), 19/128987-128988 (29.07.2019), 19/128997-128998 (29/07/2019)



Costs of construction, supervision and expropriation

Only payments to the subsidiary in Montenegro of around seven million Euros are known, while payments to the parent company are hidden. [25]

Payments to Ingerop MN LLC, Montenegrin subsidiary of the consultant



Graph 4: Payments to Ingerop MN LLC, in Euros, by years, ending with August 2020.
Source: Ministry of Finance

In 2015, Ingerop MN was paid around € 800 thousand, in 2016 and 2017 around € 1.5 million, in 2018 around 1.6 million, in 2019 almost 1.4 million, and by the end of August this year, only € 82 thousand.

State commissions

Three state commissions have also been formed, for whose work at least € 6 million has been spent.

The commission for technical inspection of works on the construction of the highway Bar - Boljare, priority section Smokovac - Uvač - Mateševo was established in 2015 and it is planned to allocate € 2.8 million [26] from the budget for its work. By the end of August 2020, the members of that commission were paid **€ 2,908,344**. [27]

[25] According to the data on all budget transactions, we determined that the payments to the Montenegrin company are around seven million Euros, but these data do not list the names of suppliers from abroad.

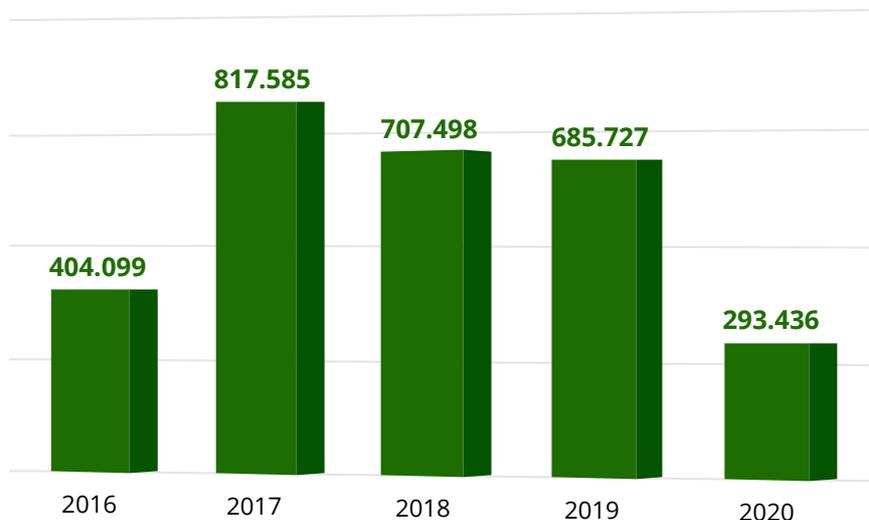
[26] Decision on Appointment of the State Commission for technical inspection of works on the construction of the Bar - Boljare Highway, priority section Smokovac - Uvač - Mateševo, Article 10, which reads: The funds for the work of the Commission shall be provided in the budget of Montenegro. The total amount of funds required for the work of the Commission is 0.35% of the contracted price of works for the design and construction of the priority section of the Bar - Boljare highway, Smokovac - Uvač - Mateševo which, based on the agreed price of € 809.577.356,14, amounts to € 2.833.520,74. The amount of compensation for each member of the Commission shall be determined in proportion to the participation of the area concerned in the overall technical inspection, as well as on the basis of the actual scope of engagement in the review of the works, at the proposal of the Chairman of the Commission.

[27] Data on all budget disbursements from 2015 to the end of August 2020 (SAP) submitted by the Ministry of Finance based on requests for access to information.



Costs of construction, supervision and expropriation

Payments to the State Commission for Technical Inspection of Highway Construction Works



Graph 5: Payments to members of the State Commission for Technical Inspection of Works, in Euros, by years, ending with August 2020. Source: Ministry of Finance

A special decision also established the Commission for audit of technical documentation, for which a budget of € 2.8 million [28] is also envisaged. However, the data on payments to that commission are not publicly available, but it had to complete or bring its work to an end, so these costs had to be paid in the previous period.

In December 2018, the third commission was formed – State Commission for audit of the preliminary design for the Matešev-Andrijeva section and the preliminary design for the Smokovac-Farmac section of the Bar-Boljare highway. That commission is of the same composition as the Commission for audit of technical documentation, and around € 600 thousand has been allocated for its work from the capital budget of the Ministry of Transport and Maritime Affairs. [29]

[28] Decision on Appointment of the State Commission for audit of technical documentation, Article 8.

[29] Article 8 of the Decision on the appointment of the State Commission for audit of the preliminary design for the section Matešev-Andrijeva and the preliminary design for the section Smokovac-Farmac of the Bar-Boljare highway. Total amount of funds required for the work of the Commission is 11% of the total cost of the preliminary design for the section Matešev-Andrijeva and section Smokovac-Farmac of the Bar-Boljare highway, which based on the total price of € 5,490,000.00, is € 603,900.00.



Costs of construction, supervision and expropriation

Monteput

The control of implementation of the construction of the first section of the highway is carried out by the state-owned company "Monteput" as well, which spent around € 5.2 million by the end of last year on that basis.

Monteput set up a Special Unit for the Bar - Boljare Highway [30] for controlling the construction of the highway, for which around **€ 4.9 million** [31] was allocated from 2014 to the end of 2019.

Pored ulaganja u finansiranje redovnih radnih procesa i obaveza, „Monte put“ d.o.o, ima i direktna ulaganja na izgradnji autoputa, kroz finansiranje određenih projekata, geoloških i geodetskih istraživanja, kao i finansiranje kompletnog rada „PJ Autoput Bar-Boljare“, koja prati

5

realizaciju implementacije projekta autoputa Bar-Boljare. Samo po ovom osnovu je od datuma osnivanja PJ 07.08.2014. do 31.12.2019.g uloženo **4.878.962 eura**.

Photo 2: Excerpt from the Annual Management Report for 2019 for "Monteput" LLC

In addition, during 2019, Monteput formed a special service to supervise the works on supplying the highway with electricity [32], which in that year cost **€ 293,606** [33] Thus, total costs of Monteput regarding the highway until the end of 2019 were € 5,172,568.

[30] Decision on Establishing a Business Unit for Managing the Bar - Boljare Highway Construction Project (Official Gazette of Montenegro no. 35/14).

[31] Expenditures of the Bar - Boljare Highway Business Unit are stated in the work plans and operating reports of Monteput adopted at sessions of the Government of Montenegro.

[32] See more information in Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 3 - Additional and subsequent works; <http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>

[33] Annual management report for 2019 for "Monteput" LLC



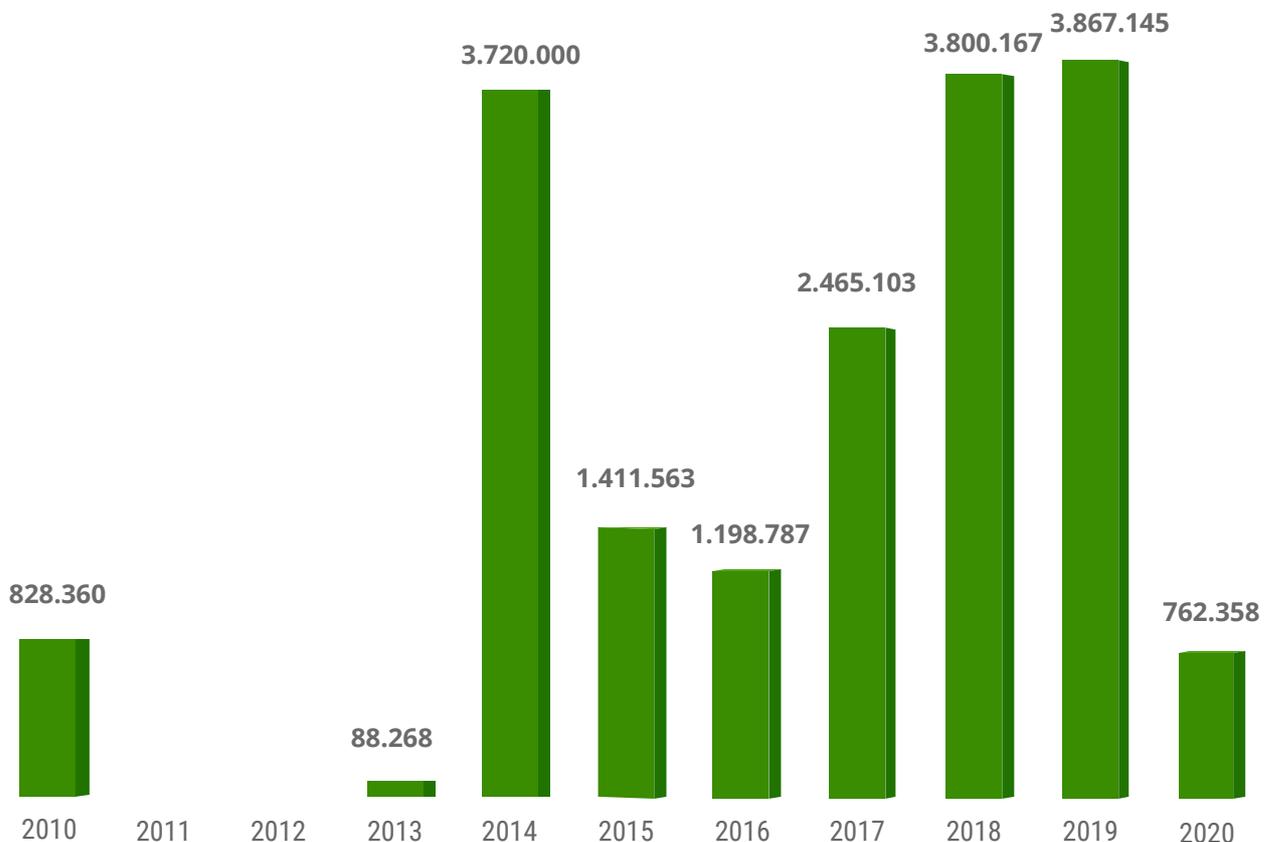
Costs of construction, supervision and expropriation

EXPROPRIATION COSTS

Over € 18 million was spent on expropriation of land for highway construction.

Although the construction of the highway was contracted in 2014, land expropriation began much earlier. According to information owned by MANS [34], expropriation payments for the Bar - Boljare highway began as early as 2010. [35]

Expropriation payments



Graph 6: Expropriation payments in Euros, source: Ministry of Finance

Most of the funds for expropriation were paid during 2014 and 2018, around € 3.8 million, and last year almost four million was spent. In the first eight months of the current year, less than one million Euros was paid for these purposes.

[34] We took information on the cost of expropriation from SAP, the budget of the Ministry of Transport and Maritime Affairs, programme Highway Bar - Boljare

[35] This can be explained through the originally planned start of works on the Bar - Boljare highway, since the ribbon was cut back in 2009.



Additional and subsequent works

Over € 100 million will be allocated for additional and subsequent works that were not foreseen in the Contract, which include electrification and water supply of the highway, as well as works on connecting roads and loop Smokovac, Veruša and Mateševo.

At the session of the Government of Montenegro held in mid-September this year, the Government adopted a decision [36] by which the state-owned company "Monteput" was approved two million Euros for the reconstruction of 1.4 kilometres of road from the loop "Mateševo" to the settlement of the same name. The money for these additional works was provided from the Budget of Montenegro, from the programme of the Traffic Administration - Reconstruction of regional and main roads in Montenegro.

Total value of the reconstruction of the mentioned 1.4 kilometres of the regional road is estimated at € 5.55 million, as stated in the Capital Budget for 2020. [37] Total amount of funds that will be allocated for the construction and reconstruction of other access roads is still unknown.

Crna Gora
VLADA CRNE GORE
Broj:07-4140
Podgorica, 17. septembar 2020. godine

Na osnovu člana 10 Uredbe o Vladi Crne Gore („Službeni list CG“, br. 80/08, 14/17 i 28/18), Vlada Crne Gore je, 11. septembra 2020. godine, bez održavanja sjednice, na osnovu pribavljenih saglasnosti većine članova Vlade odlučila o Informaciji o rekonstrukciji regionalnog puta R-13 Bioče – Mateševo – Kolašin (od petlje Mateševo do naselja Mateševo), koju je dostavilo Ministarstvo saobraćaja i pomorstva.

S tim u vezi, Vlada je donijela sljedeće

ZAKLJUČKE

1. Vlada je usvojila Informaciju o rekonstrukciji regionalnog puta R-13 Bioče – Mateševo – Kolašin (od petlje Mateševo do naselja Mateševo).
2. Zadužuje se Monteput d. o. o. Podgorica da izvrši rekonstrukciju dijela regionalnog puta R-13 Bioče – Mateševo – Kolašin, u skladu s Glavnim projektom rekonstrukcije regionalnog puta R-13 **od petlje Mateševo autoputa Bar – Boljare do naselja Mateševo.**
3. Zadužuje se Uprava za saobraćaj da nakon rekonstrukcije regionalnog puta R-13 Bioče – Mateševo – Kolašin od petlje Mateševo do naselja Mateševo, isti preuzme na održavanje u skladu sa Zakonom o putevima.
4. Zadužuju se Uprava za saobraćaj i Monteput d. o. o. da zaključe Ugovor o prenosu sredstava po ispostavljenim situacijama od strane preduzeća Monteput d. o. o. Podgorica Upravi za saobraćaj, sa projekta: 761 – Rekonstrukcija regionalnih i magistralnih puteva u Crnoj Gori, sa izdatka: 4411 – Izdaci za infrastrukturu opšteg značaja, za projekat rekonstrukcije dionice regionalnog puta R-13 Bioče – Mateševo – Kolašin (od petlje Mateševo do naselja Mateševo) **u iznosu od 2 mil. eura.**
5. Zadužuje se Ministarstvo finansija da u okviru Kapitalnog budžeta za 2021. godinu definiše izvore nedostajućih sredstava za finansiranje rekonstrukcije regionalnog puta R-13 Bioče – Mateševo – Kolašin od petlje Mateševo do naselja Mateševo, a koja će biti preusmjerena kompaniji Monteput d. o. o. Podgorica radi realizacije projekta rekonstrukcije.

Photo 3: Decision from the session of the Government of Montenegro from September 2020

Kod Uprave za saobraćaj u okviru planiranih sredstava opredjeljuju se sredstva u iznosu od 2,00 mil.€ na projektu 761–Rekonstrukcija regionalnih i magistralnih puteva u Crnoj Gori za novi projekat rekonstrukcije dionice regionalnog puta R-13 Bioče - Mateševo - Kolašin od petlje Mateševo do naselja Mateševo u dužini cca 1,4km. Projektantska vrijednost projekta je **5.546.046,05 eura**. Pored sredstava opredijeljenih Kapitalnim budžetom, sredstva potrebna za realizaciju projekta mogu biti obezbijedena iz sredstava preduzeća Monteput d.o.o Podgorica. Projekat je višegodišnji. Projekat realizuje preduzeće Monteput d.o.o Podgorica, a međusobni odnosi, kao i način finansiranja i prenosa sredstava, će biti regulisani ugovorom između Uprave za saobraćaj, preduzeća Monteput d.o.o. Podgorica i Ministarstva saobraćaja i pomorstva.

[36] Decision of the Government of Montenegro
<https://www.gov.me/ResourceManager/FileDownload.aspx?rId=415741&rType=2>

[37] Rebalance of the Budget of Montenegro from June 2020
<http://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/998/2298-13530-33-20-3.pdf>



Additional and subsequent works

This exceeded the amount of € 100 million that will be allocated for additional and subsequent works on the first phase of the highway section, which were not provided for in the Contract. The contract for the construction of the first section of the highway envisages works worth around € 810 million and it is envisaged that this amount may be increased by 10% based on unpredictable and subsequent works. [38]

Over € 100 million will be allocated for additional and subsequent works that were not foreseen in the Contract, which include electrification and water supply of the highway, as well as works on connecting roads and loop Smokovac, Veruša and Mateševo.

Description of works	Type of works	Contractor and the status of works	Value (in Euros)
Temporary power supply for the purpose of highway construction	Additional	CRBC completed works	10,999,900
Phase 1 of the Smokovac loop	Subsequent	CRBC works in progress	30,456,569
Water supply system	Subsequent	CRBC works in progress	14,203,431
Installation of cable ducts on the open route and the Moračica Bridge (for permanent power supply)	Subsequent	CRBC works in progress	4,830,000
Electrification of the highway	Additional	Novi Volvox and Electro Team works in progress	38,232,454 (+ interest)
Regional roads at Veruša and Mateševo	Additional	Unknown Did not start	5,546,046 for 1.4 km
Total			104, 268,400

Table 2: Works that are paid additionally (in Euros).

The Government and CRBC have agreed that the construction of the first phase of the Smokovac loop, as well as works on the highway water supply system and the first electrification phase, worth around €50 million, represent subsequent works, which fall within the projected 10% increase of the contracted amount.

However, additional € 50 million has so far been allocated for performing of works that were not foreseen at all by the Contract on the Design and Construction of the Highway. [39] Of this, nearly €11 million was paid to CRBC to temporarily supply the highway with electricity, while more than 38 million was to domestic companies for highway electrification.

[38] Sub-clause 13.9 stating that the value of the estimated amounts of unpredictable and subsequent works may not exceed 10% of the maximum guaranteed price referred to in Article 4, paragraph 1, of the Framework Agreement.

[39] By these works, we imply all works that are or will be performed, and their payment is independent of the maximum guaranteed price of € 809,577,356.14.



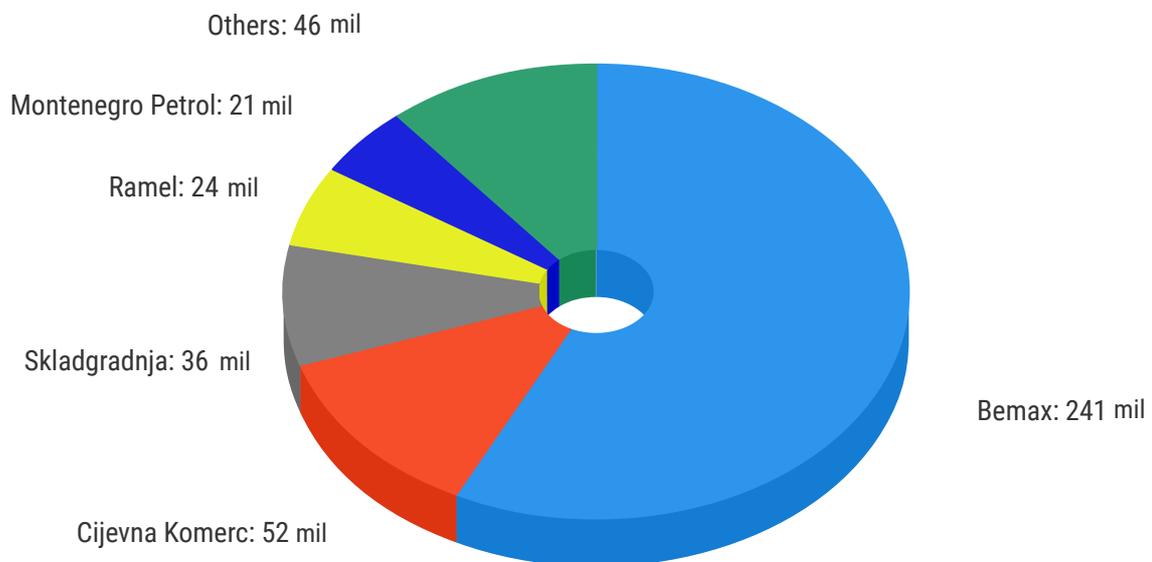
Subcontractors

The subcontractors have contracted works worth almost € 420 million, thus, they will be paid more than half of the agreed price for the construction of the first section.

CRBC undertook in the Agreement to subcontract [40] at least a third of the work. As the initial value of this section was estimated at around € 810 million, the subcontractors were supposed to receive at least around € 240 million.

However, according to data obtained through free access to information [41], CRBC has entered into contracts with subcontractors worth € 419,848,635.

Value of contracted works of the subcontractors (in millions of Euros)



Graph 7: Value of contracted works of the subcontractors, Smokovac Mateševo section Source: Monteput

Bemax received most works, over € 240 million, i.e. more than all other subcontractors together. It is followed by “Cijevna Komerc”, which was awarded works worth around € 52 million. They are followed by Croatian “Skladgradnja” with approximately € 36 million and “Ramel” with approximately €24 million, while Montenegro Petrol contracted over € 20 million.

The table provides information on the companies that have concluded contracts for the assignment of works with CRBC and the total amount of work they have contracted, for which they have obtained the consent of the competent authorities. Information on subcontractor payments by CRBC, as well as companies hired by major subcontractors to perform works, is not available to the public.

[40] Contract on design and construction of the highway Bar - Boljare, section Smokovac - Mateševo, subclause 4.4

[41] We have drawn all the amounts stated about subcontracted contracts from the abstracts of the contracts that CRBC concluded with the subcontractors. Based on the Law on Free Access to Information, MANS received copies of these abstracts from the state-owned company “Monteput”.



Subcontractors

Name of the company	Contracted amount
Bemax	240,519,522
Cijevna Komerc	52,482,331
Skladgradnja	35,502,614
Ramel	24,475,520
Montenegro Petrol	21,182,929
Putevi Užice SC	8,737,264
Dinarik LLC	6,240,000
GP ZGP JSC	3,146,939
Geoprojekt LLC	2,976,679
Novi Pazar put LLC	2,096,943
Kodar Energomontaža	2,063,848
Hidrocop LLC	1,581,407
Vektor - Integra LLC	1,348,688
Montesino LLC and Hidrocop LLC	1,260,000
Ergas LLC	1,173,331
Menadžer LLC	1,063,543
Indel Inženjering LLC	970,181
Geo Max Group LLC	962,507
Građevinarstvo and Savjetovanje LLC	935,425
Jaha Montenegro LLC Podgorica and Poliex SC Berane	930,000
Čelebić and Frame Projekt	900,000
Čelebić	790,000
Putevi Bijelo Polje	582,484
Kirchberger	579,035
ZG Projekt	502,242
Televex	402,914
Geoprom, M Projekt, Nik Com Engineering, Cepting, Proinspect ++	354,463
Novi Volvox LLC	340,321
E3 LLC and Medix LLC	338,205
Kodar inženjering	326,718
Inženjering Put LLC	318,157



Subcontractors

Name of the company	Contracted amount
7. Avgust LLC	311,572
Bi Kod LLC Podgorica	274,624
Art Beton LLC and LLC Delta Inženjering	264,455
Ening LLC	262,081
Mikromont LLC	250,057
Gratom L LLC	247,198
Energomontaža SC	246,784
Putna izgradnja Rožaje LLC	232,994
Jawel Crna Gora LLC	218,368
Ilija Novaković Ico LLC	179,289
Rocc Rand-M&V	177,884
Magus LLC and Inženjering Put LLC	154,302
Toškovići LLC	140,000
Beton Montenegro LLC	135,471
IVP TEAM LLC	132,799
Nik Com LLC	119,963
Ingenium LLC	117,000
Bastion LLC	115,000
Carinvest LLC	97,655
Kojo group and Intermost LLC	94,400
Indel Inženjering LLC and Civil Engineer LLC	77,048
Geoprom LLC Podgorica	74,189
Institut Sigurnost I.t.d.	73,560
Geotehnika LLC Bijelo Polje	69,815
Zeković company LLC	62,638
Toroagro	60,726
MI Inženjering LLC	59,150
Inter Project LLC	49,000
Skladgradnja LLC Croatia and Institut IGH JSC Croatia	47,280
Batara I.t.d.	44,000
Geotehnika plus LLC	42,402



Subcontractors

Name of the company	Contracted amount
Civil Engineer LLC	41,760
Geosonda Konsolidacija	35,000
Pro Inspect LLC	28,920
Planplus LLC	28,829
Entasis LLC	21,000
P.I. Institut za razvoj i istraživanja u oblasti zaštite na radu	15,233
Putin LLC	15,030
Exploring LLC	14,300
Flaming LLC	13,492
Lines LLC and Watt LLC	12,250
Proinspect ++ LLC	11,959
Eminent LLC	11,300
Skladgradnja LLC and Frame project LLC	10,948
Paming LLC	10,810
Via Ing LLC	9,648
Ground Engineering	9,500
Focus project	9,436
BK Elektro grupa LLC	8,787
Pro Imel LLC	6,704
Urbi Pro LLC	6,000
Decom Montenegro LLC	4,824
Cema LLC	4,800
Nik Com Engineering LLC	2,192
TOTAL	419,848,636

Table 3: Total values of subcontracted works on the first section of the highway. Source: Monteput



Subsidies

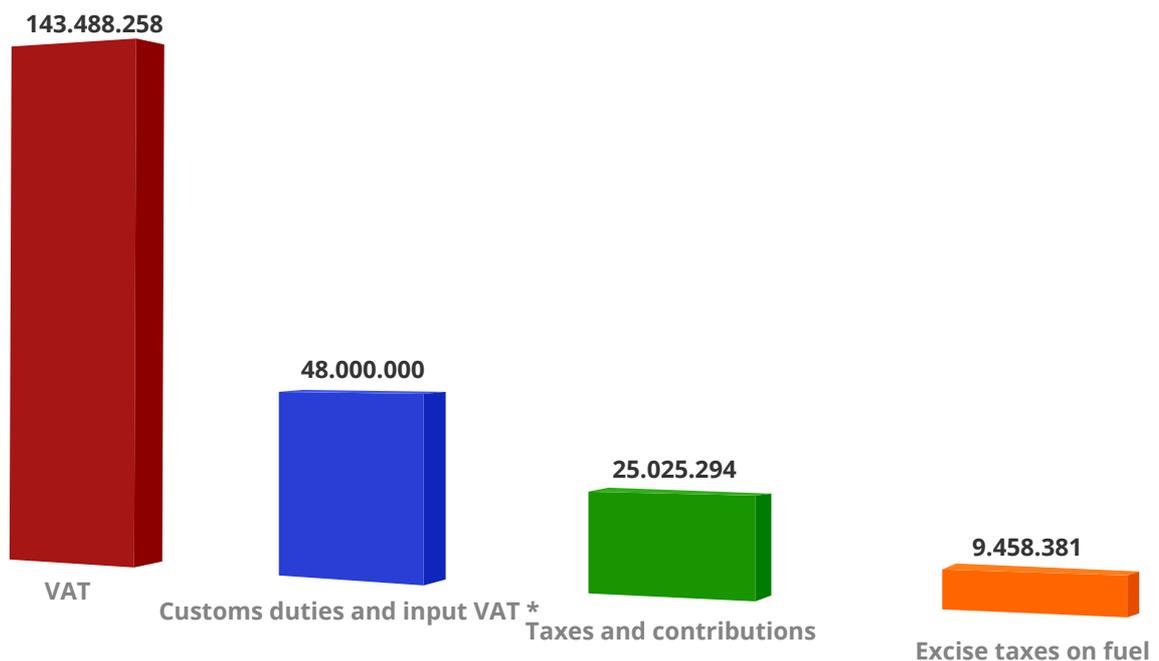
Over € 225 million of subsidies was given to CRBC and subcontractors from the beginning of the construction of the highway until the end of June 2020. This amount does not include taxes and contributions on wages paid in China, or the value of building blocks, as no data is available.

The contractor of the highway works, Chinese company CRBC is exempt from: VAT, customs duties on building materials, equipment and facilities, taxes and contributions on earnings of foreign employees, income tax, as well as fees for the exploitation of quarries and fees for technical building blocks. [42] The Government stated that this would reduce the cost of constructing this section of the highway, and thus the loan, i.e. interest. However, there is no clear overview of the amount of these subsidies, and government institutions provide completely different data.

This chapter presents official data on subsidies collected by MANS under the Law on Free Access to Information, as well as information published in the media.

Total amount of VAT exemptions was over € 143 million, customs subsidies amounted to around 48 million while exemption of excise duties amounted to around 9.5 million. Unpaid taxes and contributions for foreign workers paid in Montenegro are over 25 million.

Exemption from VAT of contractors and subcontractors



* Precise data on the amount of customs duties and input VAT are not available

Graph 8: Amounts of subsidies for highway construction, by years, in Euros, from 2015 to June 2020
Sources: Tax Administration and Customs Administration

[42] Law on the Bar - Boljare Highway, Article 14, Article 16, Article 17, Article 18, Article 19, and Article 21. Contract on design and construction of the highway Bar - Boljare, section Smokovac - Uvač - Mateševo, subclause 1.15.



Subsidies

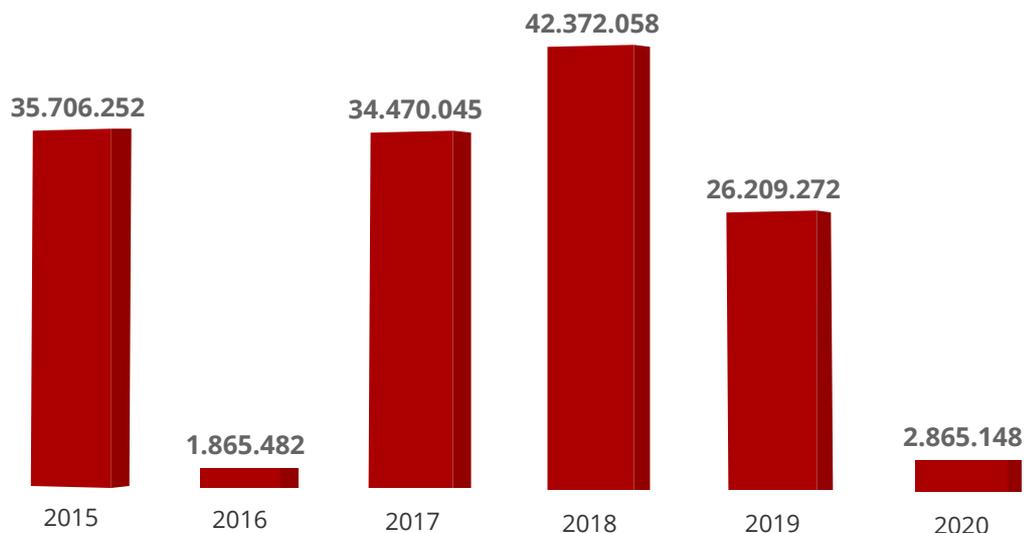
VALUE ADDED TAX

Total amount of VAT subsidy for the construction of the first section of the highway, ending with June 2020, amounts to over €143 million.

The contractor and subcontractors are exempt from paying value added tax on the sale of products and services intended for the construction of the highway. [43]

According to the information of the Tax Administration [44], the largest amounts of VAT subsidies of almost € 42 million were recorded in 2018, while in 2015 they amounted to around € 35 million. During 2017, they amounted to € 34 million, and around € 26 last year. By the end of July this year, the contractor and subcontractors were exempt from VAT of less than three million Euros, and only in 2016, subsidies on that basis were lower and amounted to less than two million.

Exemption from VAT of contractors and subcontractors



Graph 9: Exemption from VAT for contractors and subcontractors, by years, in Euros. Source: Tax Administration

The Tax Administration did not provide us with separate information on VAT subsidy for CRBC and subcontractors, so the graph shows aggregate data.

[43] Law on the Bar - Boljare Highway, Article 16: Value added tax shall be paid at the rate of 0% for the sale of products and services intended for the construction of the highway realized by the contractor, or this realization shall be carried out on behalf of the contractor of the highway construction works.

[44] On the basis of the Law on Free Access to Information, MANS requested from the Tax Administration the amounts of VAT exemptions, pursuant to the Law on the Highway. MANS numbers 18/124919-124922 (26.11.2018), 19/125768 (11.02.2019), 19/127536-127537 (10.05.2019), 19/127756 (24.06.2019) and 19/128911 (09/09/2019)



Subsidies

CUSTOMS DUTIES

From 2015 to June 2020, subsidies for customs duties and VAT on imports totalled € 48 million [45], but reliable and accurate data are not publicly available.

Since the start of the highway construction, MANS has repeatedly tried to obtain accurate information on the contractor's exemption from customs duties.

Only once, at the end of 2016, did the Customs Administration publish the customs declarations and check marks for the highway filed in the second part of that year. [46] Immediately after that, the institution changed the practice and declared the information business secret. [47]

After that, we tried to obtain basic statistics on customs subsidies, but the Customs Administration persistently claimed that they did not have this information.

In May 2019, the Customs Administration provided data to the daily "Dan" in which it was stated that CRBC had been **exempted from paying customs duties in the amount of over € 20 million** since the beginning of the works. [48]

When we requested that the institution provide us with the same information it provided to that daily newspaper, we received a response that CRBC was exempted from paying less than **two million Euros** [49] in customs duties by the end of 2019.

Later, the Ministry of Finance published the data as part of the answer to the MP's question and stated that from the beginning of construction until the end of November 2018, the import exemption, which is the sum of VAT and customs duties, amounted to around € 34 million. [50]

In the same way the latest available information was published, i.e. from 2015 to June 2020, CRBC was exempted from paying customs duties and VAT on imports in the total amount of € 48 million. [51]

[45] The contractor is exempt from paying customs duties and VAT on the import of products and services that it procures for the construction of the highway.

<https://www.vijesti.me/vijesti/ekonomija/449587/za-auto-put-isplaceno-706-miliona-oprosteno-dazbina-225-miliona>

[46] See more information in Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 5 - Subsidies, Customs duties; <http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>

[47] Ibid.

[48] <https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2019-05-24&clanak=697388>

[49] See more information in Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 5 - Subsidies, Customs duties;

<http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>

[50] Ibid.

[51] <https://www.vijesti.me/vijesti/ekonomija/449587/za-auto-put-isplaceno-706-miliona-oprosteno-dazbina-225-miliona>



Subsidies

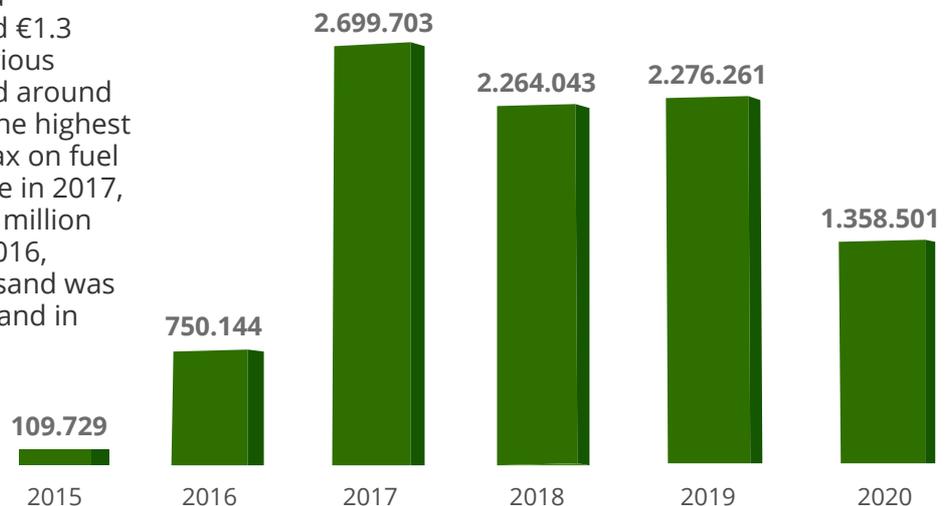
SUBSIDIES FOR EXCISE TAXES ON FUEL

Subsidies for excise taxes on fuel were around € 9.5 million, 27 cents per liter were refunded to CRBC, and 18 cents to subcontractors. [52]

The contract for the design and construction of the Bar - Boljare highway, section Smokovac - Uvač - Mateševno, states that the contractor is entitled to a refund of paid excise tax on fuel above the amount of €169 per thousand liters. [53] The Law on Excise Taxes stipulates that the subcontractor shall also be entitled to a refund of excise tax paid above the amount of € 259 per thousand liters. [54]

Subsidies on excise tax on fuel for contractors and subcontractors

In the first six months of this year [55], CRBC and its subcontractors had subsidies of around €1.3 million, and in previous years, they received around two million each. The highest refunds of excise tax on fuel were recorded were in 2017, when around € 2.7 million was paid. During 2016, around € 750 thousand was paid on that basis, and in 2015 around € 100 thousand.



Graph 10: Subsidies on excise tax on fuel for contractors and subcontractors, by years, in Euros.
Source: Customs Administration

However, in the previous period, the Customs Administration published completely different data on the refund of money for fuel excises, so this information is not reliable either. [56]

That institution did not provide us with specific data for CRBC and subcontractors, but only total amounts. However, in response to the MP's question, the Ministry of Finance stated that by the end of March 2020, 5.6 million was reimbursed to CRBC for excise tax, 1.8 million to Bemax, around 890 thousand to Cijevna komerc, around 650 thousand to Montenegro petrol, 2.9 to Ramel and one thousand Euros to Kodar. [57]

[52] According to Article 52 of the Law on excise taxes, the amount of excise tax on motor fuels is €440 per thousand litres, thus the contractor is reimbursed €271 per thousand litres, i.e. 27.1 cents per liter. In the case of subcontractors, they are reimbursed € 181 per thousand litres, i.e. 18.1 cents per liter.

[53] Sub-clause 1.15

[54] Article 30 of the Law on excise taxes; (7) During the purchase of gas oils used as motor fuel for industrial and commercial purposes, the contractor of works that uses these oils to perform the works on the Bar-Boljare Highway Project shall be reimbursed a part of the excise above the amount of €169 per 1000 litres, and the subcontractor exercises the right to refund an excise part above the amount of € 259 per 1,000 litres.

[55] Data submitted to MANS based on the Law on Free Access to Information for the period from February to the end of June 2020. For January 2020, it is stated that there was no refund of part of the paid excise duty on fuel. Request numbers: 130619 (from 25.02.2020), 130799 (from 01.04.2020), 131052 (from 15.05.2020), 131144 (from 29.05.2020), 131560 (from 01.07.2020) and 131630 from 20.07.2020)

[56] For example, the Customs Administration provided us with information that in January 2019, € 165 thousand was reimbursed to companies, while the second answer, it stated in the table that in that month € 580 thousand was reimbursed to CRBC, and a total of around €165 thousand to domestic companies. The data for March and April also differ, while for May they are incomparable. See more information in Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 5 - Subsidies;

<http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>

[57] <https://www.vijesti.me/vijesti/ekonomija/449587/za-auto-put-isplaceno-706-miliona-oprosteno-dazbina-225-miliona>



Subsidies

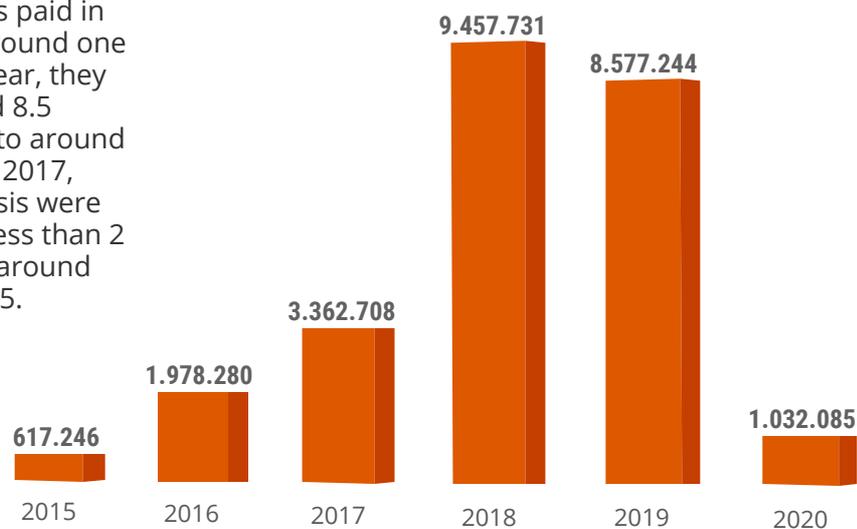
TAXES AND CONTRIBUTIONS ON WAGES OF FOREIGN EMPLOYEES

According to the Tax Administration, CRBC is exempted from paying around € 25 million on taxes and contributions on foreign employees' earnings. However, the total amount of exemption on this basis is not known, since only a part of the wages paid in Montenegro is included in the official calculation. [58]

The contractor is exempt from the income tax, as well as compulsory social security contributions for all employees who do not have Montenegrin citizenship or do not have residence in Montenegro. [59]

Subsidies for taxes and contributions on wages of foreign employees

From February to the end of June 2020, subsidies for taxes and contributions on salaries of foreign employees paid in Montenegro were around one million Euros. Last year, they amounted to around 8.5 million, and in 2018 to around € 9.5 million. During 2017, subsidies on that basis were around 3.3 million, less than 2 million in 2016, and around 600 thousand in 2015.



Graph 11: Exemption from payment of taxes and contributions on wages of foreign employees, by years, in Euros. Source: Tax Administration

The Ministry of Finance and the Tax Administration publish different data in this area as well. Namely, according to the data published by the Ministry of Finance in response to the parliamentary question, by the end of June 2020, a total of € 27.3 million in subsidies was allocated for taxes and contributions to the salaries of foreign employees. [60]

[58] For more information on earnings, see Chapter 6 Employment

[59] Law on the Bar - Boljare Highway, Article 17: Tax on personal income that is gained in Montenegro shall not be payable by the staff of the Contractor who are not Montenegrin nationals or residents of Montenegro and who gain income from the work on the Highway construction. Article 18: Expatriate staff of the Contractor being engaged for the construction of the Highway shall be exempted from payment of contributions for mandatory social security.

[60] <https://www.vijesti.me/vijesti/ekonomija/449587/za-auto-put-isplaceno-706-miliona-oprosteno-dazbina-225-miliona>



Employment

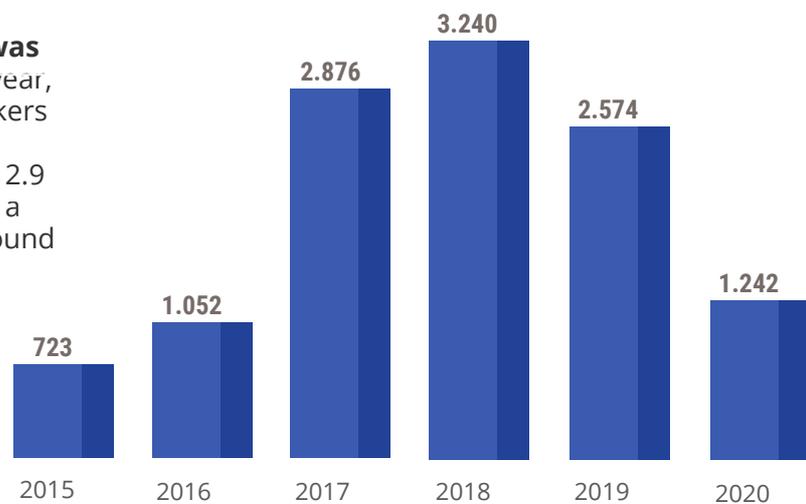
On average, around two thousand employees worked on the construction of the highway, while last year around 1.2 thousand employees were hired.

Foreigners make up two-thirds of CRBC employees, the state paid € 295 million in the last four years for their salaries, and around five million Euros was paid to domestic employees. Last year, foreign employees had on average six times the salary of domestic employees.

NUMBER OF HIGHWAY CONSTRUCTION STAFF

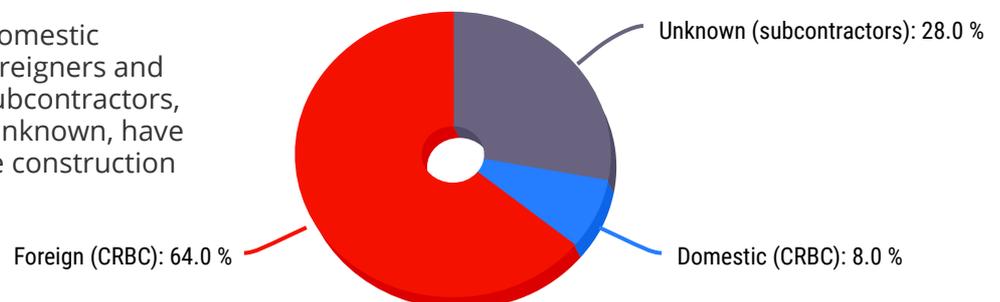
Average number of employees on the construction of the highway

Monteput data [61] show the average number of all employees on the construction of the first section of the highway was two thousand. [62] Last year, around 1.2 thousand workers were employed, over 3.2 thousand in 2018, around 2.9 thousand in 2017, around a thousand in 2016, and around 720 employees in 2015.



Graph 12: Average number of employees on the construction of the highway, by years Source: Monteput

An average of 165 domestic employees, 1.280 foreigners and 560 employees of subcontractors, whose structure is unknown, have been engaged in the construction of the highway.



Graph 13: Average number of employees on highway construction, by structure, by years Source: Monteput

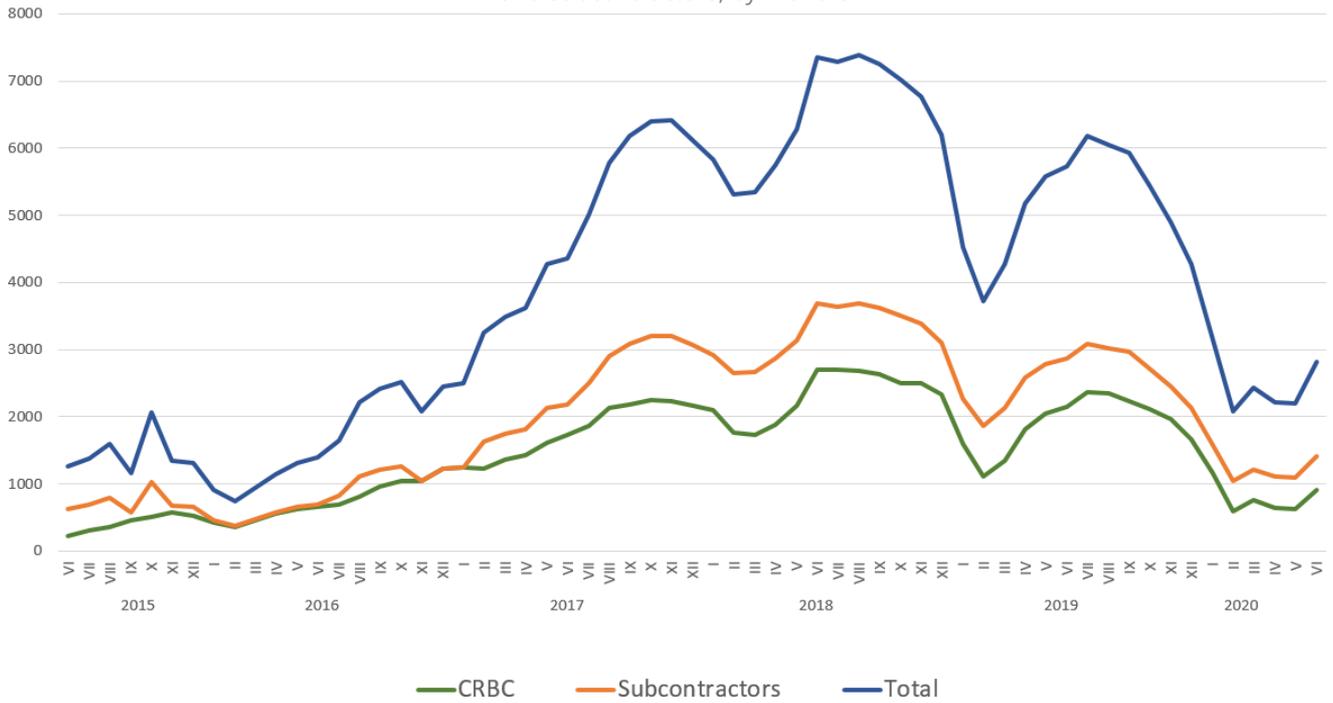
[61] On the basis of the Law on Free Access to Information, MANS received information from Monteput LLC Podgorica on the number of employees on the Bar - Boljare highway project.

[62] Monteput did not provide us with data on the number of employees with subcontractors in November and December 2016 and January 2017.



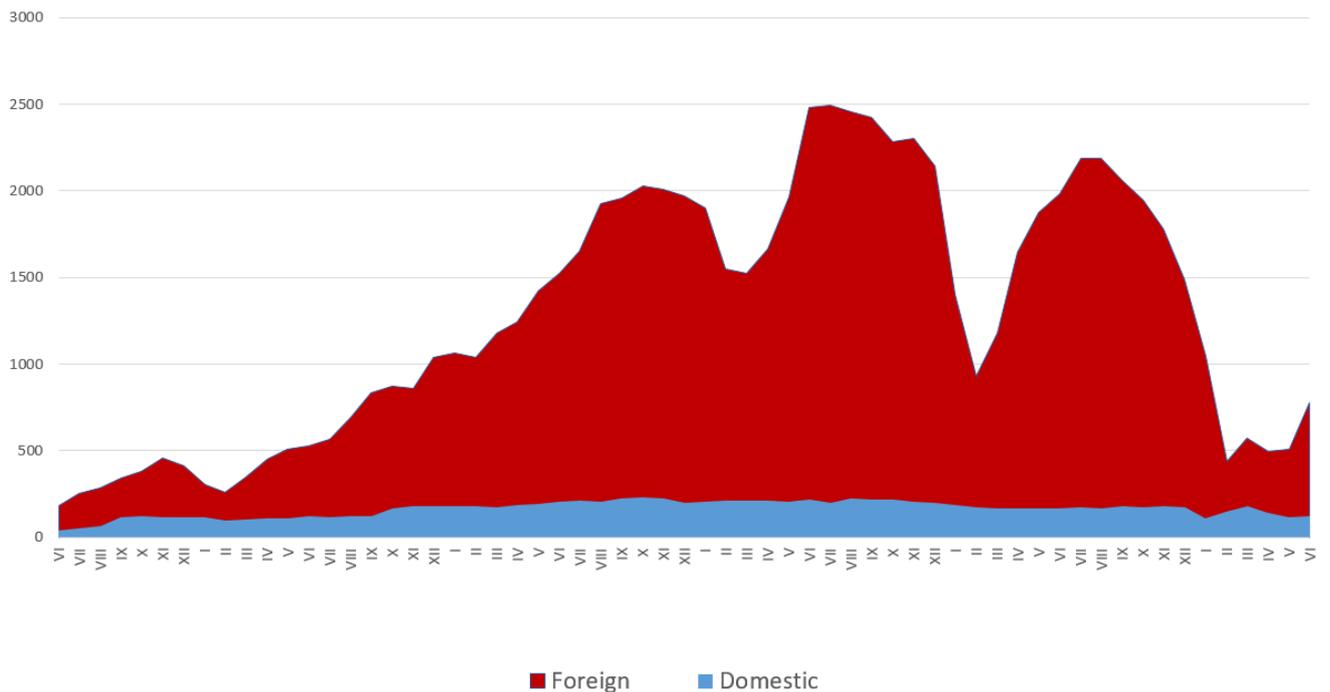
Employment

Total number of employees on the highway, number of employees with CRBC and subcontractors, by months



Graph 14: Total number of employees on the highway, number of employees with CRBC and subcontractors, by months. Source: Monteput

Structure of CRBC employees, by months



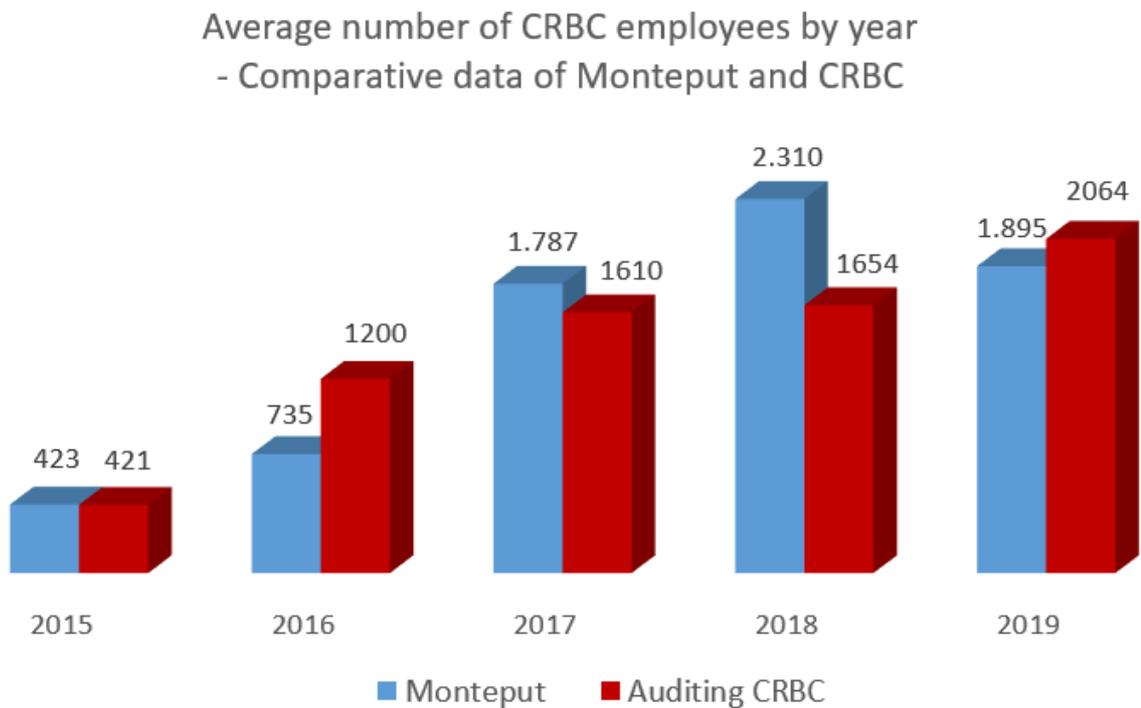
Graph 15: Total number of employees on the highway, number of employees with CRBC and subcontractors, by months. Source: Monteput



Employment

MISMATCHING OF OFFICIAL DATA

According to the data from the financial reports of CRBC [63], that company had almost 300 more employees last year than shown by the documentation of Monteput, which is in charge of managing the complete project of building the Bar - Boljare highway on behalf of the state. [64]



Graph 16: Comparative data on the average number of employees in CRBC. Source: Monteput, CRBC Financial Statements

Data on the average number of employees during 2019 from the statistical annex, which is an integral part of the financial reports of CRBC, differ from the official information of Monteput. The similar situation was in previous years, to which we pointed out in more detail in previous report.

Thus, for 2018, CRBC stated that it had 650 fewer employees than the official data of Monteput show. Moreover, according to Monteput, in each month of that year the number of CRBC employees was higher than the average reported by that company in its financial statements. [65]

Slightly fewer differences also exist in 2017, and in 2016, according to CRBC data, 465 more employees worked in that company than Monteput data show.

[63] The data are taken from the statistical annexes of this company, which we downloaded from the Taxis portal of the Tax Administration.

[64] Monteput established a business unit to manage the Bar - Boljare highway construction project (35/14).

[65] See more info in Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 6; <http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>



Employment

WAGES OF EMPLOYEES IN CRBC

According to official figures [66], from 2016 to the end of 2018, CRBC paid nearly €300 million for the wages. [67] Of that, 295 million was paid to foreign employees, while domestic employees received only five million Euros in four years. Last year, the average salary of foreign employees was around six times higher than the average monthly income of domestic employees.

In 2016, CRBC had wages and compensation expense of around €40 million, nearly €70 million in 2017, close to €110 million in 2018, and around € 79 million in 2019. [68]

That company pays part of the foreign employees' monthly income in Montenegro, but pays much more directly in China. Thus, at least € 225 million flowed out of the country based on payment of salaries to foreign employees in that country, and an additional 70 million was paid to foreigners in Montenegro. Foreign nationals employed by the contractor do not pay income tax or compulsory social security contributions. [69]

Year	Gross wages of foreign employees – payments in China	Gross wages of foreign employees – payments in Montenegro	Gross wages of domestic employees
2016.	29,031,403	12,110,223	1,151,865
2017.	56,656,753	10,509,444	1,347,996
2018.	86,998,613	21,505,974	1,395,496
2019.	52,537,171	25,358,588	1,137,772
Total	225,223,940	69,484,229	5,033,129

Table 4: Cost of gross wages for foreign employees paid in China and Montenegro, by years, in Euros.
Source: CRBC financial reports reports

In the last two years, CRBC employed ten times less domestic workers than foreigners, but their wages were 70 to 80 times lower. In 2017, wages were 50 times lower for the number of workers eight times lower, while in 2016, domestic workers were paid 35 times less than foreigners, while there were five times more foreign employees.

[66] Data from the audit reports, note to the financial statements and performance reports of the CRBC management. Based on the Law on Free Access to Information, MANS received the audit reports of CRBC for 2016 and 2017 from the Tax Administration. Request Number 19/128260, Response Date 04/09/2019.

[67] We chose the period from 2016 to the end of 2018, because for this period we have data on the cost of wages for domestic and foreign employees. The total cost of earnings including 2015 is €232.1 million.

[68] In this part of the analysis, in addition to the gross wages, we included in the wage costs of domestic employees hired by CRBC also the costs of taxes and contributions on wages and salaries at the expense of the employer. We have also included the cost of wage contributions paid in China in the cost of wages of foreign employees.

[69] Articles 17 and 18 of the Law on the Bar-Boljare Highway



Employment

Average number of foreign and domestic employees in CRBC, by years



Graph 17: Comparative data on the number of domestic and foreign employees in CRBC. Source: Monteput

Considering the number of domestic and foreign employees employed by CRBC provided to us by Monteput, and official data from the company's financial statements, **the average salary of a domestic employee last year was around €550, while the salary of Chinese workers averaged € 3.7 thousand per month.** Since CRBC is exempt from paying taxes and health insurance contributions, the expenses paid based on employee benefits are minimal. [70]

Year	Domestic employees				Foreign employees			
	Total gross earnings	Average number	Average annual earnings	Average monthly earnings	Total gross earnings	Average number	Average annual earnings	Average monthly earnings
2016.	1,151,865	129	8,947	745	41,141,626	606	67,881	5,657
2017.	1,347,996	202	6,660	555	67,166,197	1,584	42,398	3,533
2018.	1,395,496	211	6,606	550	108,504,587	2,098	51,710	4,309
2019.	1,137,772	174	6,526	544	77,895,759	1,721	45,262	3,772

Table 5: Total gross earnings of domestic and foreign employees, average number of foreign employees, their average annual and monthly earnings. Sources: CRBC and Monteput audit reports.

According to available data, the average monthly salary in China ranges from € 800 to 1.200, depending on the region. [71] **The question arises as to why the average Chinese worker on our highway is paid three to four times more than the average salary in China.**

[70] For example, according to the data from the audit report, in 2019, CRBC paid a total of € 472 thousand for contributions to the salaries of workers, which amounted to around € 79 million.

[71] <https://internshipschina.com/average-salary-in-china/>
<https://www.chinadaily.com.cn/a/201907/04/WS5d1d63cfa3105895c2e7ba4d.html>
<https://checkinprice.com/average-minimum-salary-beijing-china/>



Environmental impact

Two years since it was discovered that the CRBC was devastating the Tara River, an area under special protection of the UNESCO programme "Man and the Biosphere", there has been no reaction from the competent institutions.

During 2020, NGO MANS organized several field visits of the mentioned subsection, during which it found that there were still landfills of construction waste and rubble on the banks of the river Tara, that the disposal of construction materials in the riverbed continued, and that its watercourse was moved as needed.



This is in complete contradiction with recommendations and requests sent in 2019 by the European Commission to the Government of Montenegro and the Ministry of Transport and Maritime Affairs as a formal investor of the project, through the findings of the progress report and the European Parliament in a special resolution, as well as the conclusions of the UNESCO committee meeting.

Landfills that have been formed in several places on the banks and in Tara itself have so far been justified by the so-called regulation of the torrential flow of the river, which served CRBC as an excuse not to open the two construction material landfills that were planned in that subsection.



These landfills were also foreseen by the Strategic Environmental Assessment Study, but the Ministry of Sustainable Development and Tourism and the Environmental Protection Agency, despite the legal obligation, never performed the audit of that document to identify the situation on the ground and prescribe appropriate measures for its remediation.

Although the findings of the UNESCO mission confirmed the devastation of Tara, which in some areas is defined as "irreparable", there is still no clear plan to repair the damage caused in that part of the river.

On the other hand, the inspection initiated ex officio and based on initiatives by NGO MANS and the project partners, have not yet yielded results that would have a sustainable impact on the situation in which the Tara River is today.

Inspectors did not find violations of laws subject to measures within their competence for most of the reports submitted, such as those related to the continuous disposal of construction materials on the banks of the Tara and forming of illegal landfills in the protected area, as well as improper regulation of the riverbed.



Environmental impact

During the field visits in 2020, documented exploitation of gravel near the construction site in Uvač was noted, but after the reports were submitted to the competent inspections and the State Prosecutor's Office, there is still no information on their outcome.

This continued the practice of silence of the institutions to the obvious devastation of the Tara River, stated in the last few years by the European Parliament, the European Commission and UNESCO, which was covered in previous monitoring reports.



The so-called regulation of the Tara riverbed continues to be a cost-effective way for CRBC to dispose of its waste, which permanently endangers the river's environment, with no known consequences for now. Ultimately, it is of particular concern that even for only a few irregularities that have been processed by inspections to the State Prosecutor's Office over the years, the public has no additional information.



Inspections

The inspections declared secret data on the controls of contractors and subcontractors and the imposed fines, which were previously available to the public.

After publishing of the previous MANS report, with data on the number of controls, fines and their amount, the institutions changed their practice and began to declare those data secret.

For example, the Administration for Inspection Affairs declared secret information on the total number of controls performed, total number of fines imposed and total amount of fines imposed by the Department for Environmental Inspection, in connection with the construction of the highway in the period from June 2019 to May 2020.

The Administration explained that statistical data on the work of environmental inspection are secret because their publication would "jeopardize the planning and further inspection", as well as that "by prematurely disclosing the requested information, there is a possibility of drawing a conclusion and prejudging possible responsibility before the control is performed and the inspection is completed."

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. Prijevremenim objelodanjivanjem traženih informacija postoji mogućnost dovođenja zaključka, te prejudiciranja eventualne odgovornosti prije izvršene kontrole i okončanja inspeksijskog nadzora

Sa izloženog, a na osnovu člana 29 stav 1 tačka 3 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", br. 044/12 od 09.08.2012, 030/17 od 09.05.2017), Uprava za inspeksijske poslove je odbila zahtjev.

PRAVNA POUKA: Protiv ovog rješenja može se izjaviti žalba Agenciji za zaštitu podataka o ličnosti i pristup informacijama u roku od 15 dana od dana prijema rješenja, neposredno ili preko Uprave za inspeksijske poslove.



Prilog:
Test štetnosti

Dostavljeno:
NVO Mans – Dalmatinska 188, Podgorica
A/A

Photo 4: Excerpt from the response of the Administration for Inspection Affairs dated 25.05.2020, number 131081

The same data on the work of the Environmental Inspection were provided to us by the Administration in June 2019, and they were published in the previous report. [72]



Broj : UP 0801-03/2019-39/2
Podgorica, 13.06.2019. godine

Uprava za inspeksijske poslove na osnovu člana 30 stav 1 Zakona o slobodnom pristupu informacijama ("Sl. list Crne Gore", 44/12) i člana 1 Uredbe o nadoknadi troškova u postupku za pristup informacijama ("Sl. list CG", broj 66/16), postupajući po zahtjevu za pristup informaciji Mreže za afirmaciju nevladinog sektora MANS, donosi

RJEŠENJE

1. Usvaja se zahtjev za dostavljanje informacija Mreže za afirmaciju nevladinog sektora MANS, evidentiran u pisarnici Uprave za inspeksijske poslove pod br. UP 0801-03/2019-39, od 03.06.2019. godine i dozvoljava pristup informaciji:

- Informacije o ukupnom broju izvršenih kontrola, ukupnom broju izrečenih kazni i ukupnom novčanom iznosu izrečenih kazni Ekološke inspekcije, vezanih za izgradnju Autoputa Bar- Boljare, dionica Smokovac- Uvac-Mateševo, od početka izgradnje

2. Pristup traženoj informaciji, iz tačke 1 dispozitiva ovog rješenja, ostvariće se poštanskom dostavom fotokopije informacije podnosiocu zahtjeva, od strane organa vlasti. Troškovi kopiranja se ne naplaćuju iz razloga ekonomičnosti.

3. Žalba na rješenje ne odlaže izvršenje ovog rješenja.

Photo 5: Excerpt from the response of the Administration for Inspection Affairs dated 13.06.2019, number 128080



Broj : UP 0801-03-037/20-48/3

Podgorica, 25.05.2020. godine

Uprava za inspeksijske poslove rješavajući po zahtjevu za slobodan pristup informacijama NVO MANS broj: UP 0801-03-037/20-48 od 20.05.2020. godine, a na osnovu člana 29 stav 1 tačka 3 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", br. 044/12 od 09.08.2012, 030/17 od 09.05.2017), donosi

RJEŠENJE

1. Odbija se zahtjev za Slobodan pristup informacijama NVO MANS broj: UP 0801-03-037/20-48 od 20.05.2020. godine kojim se traži Kopija informacije o ukupnom broju izvršenih kontrola, ukupnom broju izrečenih kazni i ukupnom novčanom iznosu izrečenih kazni Odsjek za ekološku inspekciju, u vezi sa izgradnjom autoputa Bar-Boljare, dionica Smokovac – Mateševo, a koja se odnosi na period od juna 2019. godine do danas, kao neosnovan, te se ograničava pristup traženoj informaciji u skladu sa zakonom.

Photo 6: Excerpt from the response of the Administration for Inspection Affairs dated 25.05.2020, number 131081

[72] Third report on the construction of the Bar - Boljare highway - Road to debt slavery, Chapter 7; <http://www.mans.co.me/en/wp-content/uploads/2020/01/Third-report-on-the-construction-of-the-Bar-Boljare-Highway.pdf>



Inspections

Previous MANS' report cites data indicating that in the four years since the construction of the highway that devastated the Tara River, environmental inspectors visited the construction site more than 60 times and filed several requests to initiate misdemeanour proceedings, but the authorities fined the Chinese company CRBC and subcontractors with less than € 20,000. [73]

In April 2020, that administration declared secret the data on controls and penalties imposed by the Labour Inspection during 2016, claiming that their publication would jeopardize the planning and further performing of inspection supervision.

Prior to the publication of the previous report, the Administration for Inspection Affairs provided us with the same data, cumulatively for four years.



Crna Gora
Uprava za inspeksijske poslove

Adresa: Oktobarske revolucije, br.130
81000 Podgorica, Crna Gora
tel: +382 234 421
fax: +382 234 406
www.uip.gov.me

Broj : UP 0801-03/2019-60/11

Podgorica, 27.04.2020. godine

Uprava za inspeksijske poslove rješavajući po zahtjevu za slobodan pristup informacijama NVO Mans br.128406, a na osnovu člana 29 stav 1 tačka 3 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", br. 044/12 od 09.08.2012, 030/17 od 09.05.2017), postupajući po rješenju Agencije za zaštitu ličnih podataka i slobodan pristup informacijama broj UPII 07-30-2529-2/19 od 02.04.2020.godine, donosi

RJEŠENJE

1.Odbija se zahtjev za Slobodan pristup informacijama advokata NVO Mans kojim se traži Kopija informacija o ukupnom broju izvršenih kontrola, ukupnom broju izrečenih kazni i ukupnom novčanom iznosu izrečenih kazni i ukupnom novčanom iznosu izrečenih kazni Inspekcije rada u 2016.godini, vezanih za izgradnju Autoputa Bar – Boljare kao neosnovan, te se ograničava pristup traženoj informaciji u skladu sa zakonom.

Obrazloženje

Dana 07.08.2019. godine NVO Mans podnijela je Upravi za inspeksijske poslove zahtjev br. 128406 u kojem je zatražen pristup: Kopiju informacija o ukupnom broju izvršenih kontrola, ukupnom broju izrečenih kazni i ukupnom novčanom iznosu izrečenih kazni Inspekcije rada u 2016.godini, vezanih za izgradnju Autoputa Bar – Boljare.

Postupajući po predmetnom zahtjevu Uprava za inspeksijske poslove donijela je rješenje broj: UP 0801-03/2019-60/6 od 14.08.2019.godine. Na donešeno rješenje NVO Mans podnio je žalbu Agenciji za zaštitu ličnih podataka i slobodan pristup informacijama, koja je rješenjem UPII 07-30-2529-2/19 od 02.04.2020.godine predmet dostavila prvostepenom organu na ponovni postupak i odlučivanje.

Rješavajući po predmetnom zahtjevu Uprava za inspeksijske poslove je utvrdila da posjeduje tražene informacije.

U skladu sa članom 16 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", br. 044/12 od 09.08.2012, 030/17 od 09.05.2017), ova uprava je izvršila test

Photo 7: Excerpt from the response of the Administration for Inspection Affairs dated 27.04.2020, number 128406



CRNA GORA
VLADA CRNE GORE
UPRAVA ZA INSPEKCIJSKE POSLOVE
Odsjek za inspekciju rada

19/428083
11.06.2019

Broj: 0204/1-176/1
Podgorica 06.06.2019.godine

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA – MANS
Vanja Čalović Marković, izvršna direktorica

PODGORICA
Dalmatinska 188

PREDMET: Obavještenje u vezi sa zahtjevom o slobodnom pristupu informacijama od 03.06.2019.godine

Povodom predmetnog zahtjeva, dostavljenog elektronskom poštom 03.06.2019.godine (zaveden u Upravi za inspeksijske poslove pod br. UP-0801-03/2019-37 od 03.06.2019.godine, a u Odsjeku za inspekciju rada pod br.0204/1-176 od 06.06.2019.godine), kojim tražite, shodno Zakonu o slobodnom pristupu informacijama, da dostavimo kopiju informacije o ukupnom broju izvršenih kontrola, ukupnom broju izrečenih kazni i ukupnom novčanom iznosu izrečenih kazni Inspekcije rada, vezanih za izgradnju Autoputa Bar-Boljare, od početka izgradnje, obavještavamo Vas:

- izvršeno je preko 100 kontrola iz oblasti radnih odnosa i zapošljavanja i oblasti zaštite i zdravlja na radu
- donijeto je 35 ukazivanja za otklanjanje nepravilnosti u primjereno ostavljenom roku
- donijeto je 6 rješenja za otklanjanje nepravilnosti u primjereno ostavljenom roku
- izdata su 42 prekršajna naloga u ukupnom iznosu od 13.060,00€

S poštovanjem,

GLAVNA INSPEKTORKA RADA

Angelina Medvedović

Photo 8: Excerpt from the response of the Administration for Inspection Affairs dated 06.06.2019, number 128083

Other inspections did not respond to requests for information after the publication of our previous report.



Access to information

The Administrative Court has drastically changed the practice in highway-related cases, thus, even more information is hidden from the public.

That court previously determined that the decisions of the Ministry of Transport and Maritime Affairs, according to which numerous categories of data on the highway were declared secret in advance, are contrary to the law. On that basis, many decisions of institutions to declare various information business secrets were annulled.

However, during 2020, the same court considered as lawful the same decisions of institutions in which they referred to the decisions of the Ministry, which the court had previously found to be inconsistent with the law.

The judgment of the Administrative Court adopted in 2019 [74] states:

"The court also examined the decisions of the Ministry of Transport and Maritime Affairs, **number 34-451/2016-1 from 01.08.2016 and number 34/17-01-2229/1 from 07.04.2017**, and found that from those decisions it could not determine whether they covered all the information that was the subject of the request, because it could not be concluded with certainty that the requested monthly reports were listed in these decisions, while in the reasoning of the decision, no clarifications were given in relation to this fact. Furthermore, it is unclear for what reasons the information in question was classified "INTERNAL". In accordance with Article 10 of the Law on Data Secrecy (Official Gazette of Montenegro, No. 14/08... 48/15), data may be classified if it is necessary in a democratic society and if the interest referred to in Article 3 paragraph 1 of this Law (security and defence, foreign, monetary and economic policy of Montenegro), is more prevailing than the interest in free access to information. **Article 12 of the same law stipulates that degree of confidentiality "INTERNAL" is determined for information the disclosure of which would have harmful consequences for performing the work of a body, and in the cited decisions there are no allegations about the work or possible harmful consequences for the work of the body that determined the degree of secrecy of this information. According to the Court, the reasons from the mentioned decisions are also arbitrary, unclear and unspecified, because the economic interests of the investor and its intellectual property, i.e. business secret, are stated, which are ultimately unacceptable reasons**, given that a set of intellectual property rights, in terms of the Law on the Enforcement of Intellectual Property Rights ("Official Gazette of the Republic of Montenegro", No. 45/05... 42/16), consist of: copyright and related rights, trademark, geographical indications of origin, design, patent and topography of the integrated circuits, while information that is a business secret, as such, must be prescribed by a special law (Article 14 paragraph 1 item 6 of the Law on Free Access to Information), which, is not the case here, thus that degree of secrecy is not lawfully determined for the requested information.

For all the above reasons, the Court ruled that the impugned decision was unlawful, which is why it had to be annulled."

[74] U. no.1723/18 from 16.10. 2019, which referred to the request for access to information related to: programme of works (version 1) dated 08.06.2015, as well as later updated versions, submitted by CRBC in connection with the construction of the Bar-Boljare highway, section Smokovac-Mateševo; the initial report for the period December 2014 to July 31, 2015, which the Business Unit for Project Management of the Bar-Boljare Highway Project submitted to the Ministry of Transport and Maritime Affairs; monthly report for August, September, October, November and December 2015, which was submitted by the Business Unit for project management of the Bar-Boljare highway construction to the Ministry of Transport and Maritime Affairs



Access to information

zaštitu konkurencije i poslovnu tajnu u vezi sa pravom intelektualne svojine, a navedena dokumenta predstavljaju intelektualnu svojinu investitora, kao i u interesu vršenja službene dužnosti, posebno u vezi sa konsultacijama unutar i između organa vlasti u vezi sa utvrđivanjem stavova, izrade službenih dokumenata i predlaganja rješenja nekog predmeta. Dostavljen je i test štetnosti broj 34/17-01-1007/1 od 23.02.2017.godine i broj 34/17-01-2229/2 od 07.04.2017.godine, kojima je, od strane Ministarstva saobraćaja i pomorstva, u odnosu na konkretni Program radova procijenjeno, da bi njegovo objavljivanje prije završetka radova moglo dovesti do pogrešnog tumačenja sadržaja informacija.

Sud nalazi da osporeno rješenje ne sadrži prihvatljive i jasne razloge zbog čega je odbijen pristup traženim informacijama, budući da su razlozi kojima se rukovodi tuženi, a koji se uglavnom svode na konstataciju da tražene informacije nose oznaku "INTERNO"; da predstavljaju promjenljive kategorije i utiču na trenutne ugovorne pozicije ugovornih strana; da se radi o informacijama koje nastaju u postupku pripreme i usaglašavanja stavova i mišljenja između subjekata koji su uključeni u proces praćenja realizacije projekta, zbog čega bi njihovo objavljivanje prije završetka radova moglo dovesti do pogrešnog tumačenja sadržaja informacije i ozbiljno ugroziti sam proces donošenja odluka, po nalaženju Suda, sasvim paušalno, neodređeni i nepotkrijepljeni nijednim dokazom, niti materijalnim propisom. Prema tome, posve je nerazumljivo na koji način i na kakve trenutne pozicije bi ovakve informacije mogle uticati, te je potpuno nejasan i zaključak tuženog o mogućnosti pogrešnog tumačenja sadržaja informacija, te na koji način i čime bi se to ozbiljno ugrozio sam proces donošenja odluka, kao i koje su to odluke.

Kako se tuženi pozvao na odredbu člana 14 stav 1 tačka 2 Zakona o slobodnom pristupu informacijama, kojom je propisano da organ vlasti može ograničiti pristup informaciji ili dijelu informacije, ako je to u interesu bezbjednosti, odbrane, spoljne, monetarne i ekonomske politike Crne Gore, u skladu sa propisima kojima se uređuje tajnost podataka, označenih stepenom tajnosti, Sud je ispitivao i rješenja Ministarstva saobraćaja i pomorstva, broj 34-451/2016-1 od 01.08.2016.godine i broj 34/17-01-2229/1 od 07.04.2017.godine, pa je našao da se iz tih rješenja ne može utvrditi da li su njima obuhvaćene sve informacije koje su predmet zahtjeva, jer se ne može sa sigurnošću zaključiti da su traženi mjesečni izvještaji navedeni u tim rješenjima, a u obrazloženju rješenja nijesu data nikakva pojašnjenja u odnosu na ovu činjenicu. Nadalje, nejasno je iz kojih razloga je predmetnim informacijama određen stepen tajnosti „INTERNO“. U skladu sa članom 10 Zakona o tajnosti podataka ("Sl.list CG, br.14/08...48/15), podatak se može označiti tajnim ako je to neophodno u demokratskom društvu i ako je interes iz člana 3 stav 1 ovog zakona (bezbjednost i odbrana, vanjska, monetarna i ekonomska politika Crne Gore), značajniji od interesa za slobodnim pristupom informacijama. Članom 12 istog zakona propisano je da se stepen "INTERNO" određuje za podatke čijim bi otkrivanjem nastupile štetne posljedice za ostvarivanje funkcije organa, a u citiranim rješenjima nema ni jednog navoda o funkciji, niti o eventualnim štetnim posljedicama po funkciju organa koji je odredio stepen tajnosti ovim podacima. Razlozi iz navedenih rješenja, takođe su, po mišljenju Suda, proizvoljni, nejasni i neodređeni, jer se navode ekonomski interesi investitora, te njegova intelektualna svojina, odnosno poslovna tajna, a koji razlozi su u krajnjem neprihvatljivi, s obzirom da skup prava intelektualne svojine, u smislu Zakona o primjeni propisa kojima se uređuje zaštita prava intelektualne svojine ("Sl.list RCG"

br.45/05...42/16), čine: autorsko i srodna prava, žig, geografske oznake porijekla, dizajn, patent i topografija integrisanih kola, dok informacija koja je poslovna tajna, kao takva, mora biti propisana posebnim zakonom (član 14 stav 1 tačka 6 Zakona o slobodnom pristupu informacijama), što, u konkretnom, nije slučaj, pa slijedi da traženim informacijama nije na zakonit način određen stepen tajnosti.

Iz svih navedenih razloga, Sud je pobijano rješenje ocijenio kao nezakonito, zbog čega je isto moralo biti poništeno.

Odredbom člana 7 Zakona o slobodnom pristupu informacijama, propisano je da je pristup informacijama od javnog interesa, dok je odredbom člana 13 istog zakona predviđeno da je organ vlasti dužan da fizičkom i pravnom licu koje traži pristup informaciji omogući pristup informaciji ili njenom dijelu koju posjeduje, osim u slučajevima predviđenim ovim zakonom. Kako je jedan od glavnih ciljeva izgradnje autoputa Bar – Boljare, zadovoljenje potreba korisnika, što su, u prvom redu, građani Crne Gore, dok su neki od strateških ciljeva siguran i bezbjedan saobraćaj u cilju očuvanja ljudskih života i materijalnih vrijednosti; minimiziranje negativnih uticaja saobraćaja na životnu sredinu, te fiskalna održivost finansijskog sistema Crne Gore, to je nesporan interes javnosti da zna da li je u konkretnom slučaju na adekvatan način zaštićen javni interes, a sve u smislu člana 5 Zakona o slobodnom pristupu informacijama, te, kako je utvrđeno da ne postoji ni jedan od interesa iz člana 14 Zakona, zbog čije zaštite bi bio ograničen pristup traženim informacijama, Sud je usvojio zahtjev tužioca broj 16/84625-84630 od 24.03.2016.godine, i dozvolio pristup informaciji, na način i u roku propisanom članom 32 istog zakona, a kako je precizirano stavom 3 izreke presude.

Sud je cijenio prigovor nedostatka pasivne legitimacije, pa je našao da je isti neosnovan iz razloga što, u smislu člana 56 Zakona o tajnosti podataka, organi i organizacije iz člana 2 Zakona, koji od ovlašćenog lica koje je odredilo stepen tajnosti podatka dobiju na korišćenje tajni podatak, ne smiju ga bez saglasnosti tog lica davati drugim korisnicima, osim u slučajevima utvrđenim ovim zakonom i propisima donijetim na osnovu ovog zakona. U konkretnom slučaju, nema mjesta primjeni ove odredbe, budući da se ne radi o tajnim podacima koji su od strane Ministarstva dostavljeni tuženom.

Na osnovu svega izloženog, Sud je, u skladu sa članom 36 Zakona o upravnom sporu ("Sl.list CG", br.54/16), odlučio kao u izreci presude.

Odluka o troškovima spora, zasnovana je na odredbi člana 152 stav 1 Zakona o parničnom postupku, u vezi člana 39 stav 2 Zakona o upravnom sporu, a troškovi se odnose na sastav tužbe i prisustvo punomoćnika tužioca na usmenoj raspravi u iznosu od po 200,00 € u skladu sa AT-om, uz uvećanje za PDV.

UPRAVNI SUD CRNE GORE
Podgorica, 16.10. 2019. Godine

Zapisničar,
Dragana Paunović,s.r.

PREDSJEDNIK VIJEĆA,
Muzafer Hadžajić,s.r.

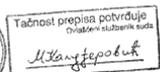


Photo 9: Excerpt from the Judgment of the Administrative Court No. 1723/18 of 16.10. 2019

Despite the court's assessment that the Ministry's decisions were unlawful, the institutions continued to refer to them as a basis for declaring the data secret.

During this year, the practice of the court also changed, which no longer engaged in the assessment of the legality of acts based on which information is declared secret. [75]

In the judgment, the Administrative Court refers to the decision of the Ministry number 34/17-01-2229/1 from 07.04.2017 as a basis for declaring data secret. For the same decision, that court previously determined that it was not adopted in accordance with the law. However, in this and similar cases adjudicated in 2020, that court does not assess the legality of the decision on the basis of which information is hidden from the public.

[75] With the request for access to information, we asked for all reports of the contractor China Road and Bridge Corporation on the progress of works under the Contract on the design and construction of the highway Bar-Bolja, section Smokovac-Mateševo, relating to February 2018, as well as Project Manager Progress Reports and the implementation of the project for February 2018, in connection with the Contract on the design and construction of the highway Bar-Bolja, section Smokovac-Mateševo.



Access to information

Iz spisa predmeta se utvrđuje da je tužilac dana 09.03. 2018. godine, tuženom organu podnio zahtjev za dostavljanje kopija svih izvještaja izvođača radova China Road and Bridge Corporation o napredovanju radova po osnovu Ugovora o projektovanju i izgradnji autoputa Bar – Boljare, dionica Smokovac – Mateševo, a koji se odnose na februar 2018.godine, te Izvještaja Upravljača projektom o napretku u realizaciji prijekta za februar 2018. godine, a u vezi Ugovora o projektovanju i izgradnji autoputa bar – Boliare dionica Smokovac – Mateševo.

Rješenjem tuženog organa broj 34/17-01-2229/1 od 07.04.2017. godine, u skladu sa Zakonom o tajnosti podataka, tražene informacije su označene stepenom tajnosti "INTERNO", pa u konkretnom nijesu ispunjeni zakonski uslovi za omogućavanje slobodnog pristupa istim. Pored iznijetog, urađen je i test štetnosti br. 34/17-01-2229/2 od 07.04.2017. godine, kojim je procijenjeno i jasno objašnjeno da bi se objelodanjivanjem traženih informacija značajno ugrozili interesi iz člana 14 Zakona o slobodnom pristupu informacijama, jer je evidentno da bi njihovim objelodanjivanjem moglo doći do nastupanja štetnih posledica koje su od većeg značaja od interesa javnosti da zna predmetne podatke.

Članom 17 Zakona o slobodnom pristupu informacijama je propisano da je organ dužan da omogući pristup informaciji iz člana 14 istog zakona kada postoji provlađujući javni interes, ali u konkretnom slučaju nema ni jedne činjenice koja bi osnovano ukazivala na postojanje bilo kojeg razloga iz navedene zakonske odredbe.

Kod ovako utvrđenog činjeničnog stanja i citiranih odredaba, Sud nalazi da je osporeno rješenje zakonito i da nije prekršen član 6 stav 1 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda.

Sud je cijenio i ostale navode tužioca, ali je našao da su isti bez uticaja za drugačiju odluku u ovoj pravnoj stvari.

Odluka o troškovima spora, zasnovana je na odredbi člana 152 Zakona o parničnom postupku, u vezi člana 39 stav 2 Zakona o upravnom sporu („Sl.list CG”, br.54/16), s obzirom da tužilac nije uspio u sporu.

Iz iznijetih razloga, a na osnovu odredbe člana 35 stav 1 Zakona o upravnom sporu, odlučeno je kao u izreci.

UPRAVNI SUD CRNE GORE
Podgorica, 06.07.2020.godine

Zapisničarka
Rajka Milović, s.r.

PREDSJEDNICA VIJEĆA
Biserka Bukvić, s.r.

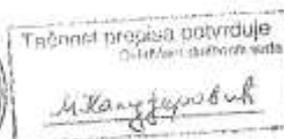


Photo 10: Excerpt from the judgment of the Administrative Court number 2953/18 of 06.07.2020



Other major projects

Global pandemic of the COVID-19 virus has significantly slowed down the plans of the Government of Montenegro when it comes to major infrastructure projects, and investments in specially protected areas. Nevertheless, in cooperation with the project partners, MANS kept the public informed on all relevant issues, advocating for maximum respect for relevant international standards when implementing this type of investments.

In Buljarica, the new Law on Expropriation has been brought closer to the local population, as well as how the new legal solutions will affect their property rights, but also the comprehensive development of the area in which they live, local economy and the state of the environment. Special emphasis was placed on the presentation of possible alternatives to mere "concreting" of that part of Montenegrin coast, and what benefits the local community can have from the model of sustainable use of special resources, such as the area of Buljarica.

After placing the area of Ulcinj Salina under a special protection regime and registration on the Ramsar list, the next step was made in order to get concrete results. The partners in this project became members of the interdepartmental working group that should work in the coming period on finding the best model for managing this area. However, property relations that are still unresolved with the former owner of the company that exploited the salt, represent one of the biggest obstacles to the establishment of a complete system of protection of the Ulcinj Salina.

In Pljevlja, NGO sector continued the fight for cleaner energy sources, to which the announced ecological reconstruction of the Thermal Power Plant in that town should contribute. After the Government of Montenegro, under public pressure and due to unfavourable financial situation gave up the construction of the second block of the thermal power plant, partner environmental organizations continued to insist on respecting international standards during the planned reconstruction of the existing block, but also on the final cessation of energy production from the so-called dirty sources.

The issue of construction in the protected area of the Skadar Lake National Park was re-internationalized after the Berne Convention, as a permanent body of the Council of Europe, stated that the Government of Montenegro had only partially adopted earlier recommendations, and that in plans, certain parts of the national park were still exposed to possible devastation through the construction of facilities.

During 2020, Spatial and Urban Plan of Kotor, a town under the special protection of the UNESCO World Heritage Programme, was drafted and discussed. Despite concrete measures and warnings from the civil sector, the adopted plan still contains solutions that are in conflict with the recommendations of UNESCO.



Other major projects

BULJARICA

The year 2020 did not bring significant progress when it comes to the plans of the Government of Montenegro for the valorisation of the area of Buljarica. On the other hand, the project partner - Montenegrin Ecologists Society (CDE), organized events and conducted analyses to try to inform locals and the public about the consequences of the new Law on Expropriation [76], as well as to offer alternative directions for the development of Buljarica.

As stated in previous reports, the new legal solution for expropriation in Montenegro is problematic from several aspects, especially from the aspect of protection of private property - bearing in mind that the new law allows the state to alienate property even if its owner does not agree, i.e. enables the implementation of the decision on expropriation even before possibly conducted court dispute in connection with it and its finality. [77]

Thus, in March 2020, a public debate was held on the topic "Land expropriation and development of Buljarica", where the possibilities of protecting the rights of real estate owners and previous attempts to sell land in Buljarica, i.e. its "economic valorisation" were discussed. [78] In the presence of the large number of locals and other interested citizens, the discussion opened a series of questions and tried to provide answers regarding the protection of property rights of locals, as well as the common and future course of action.



The epidemic of the Covid-19 virus made difficult the then ongoing preparation of the round table on the topic "Buljarica: the pearl of Paštrovići or the feast for the privileged". Nevertheless, the analysis made as part of the event preparation was published on CDE's website and thus made available to all citizens. [79] The analysis addresses the area of Buljarica from the aspect of law, ecology and tourism, trying to recognize current issues and obstacles for the development of that place, as well as to provide concrete recommendations for specific and sustainable valorisation of the entire area.

In addition, specific presentations of experts dealing with Buljarica were recorded and posted on YouTube, and previously promoted on social networks, in order to make them available to citizens in the epidemic, and thus improve social discussion about the potential of Buljarica. [80]

[76] Law on Expropriation (Official Gazette of the Republic of Montenegro No. 55/2000, 12/2002 - Decision US and 28/2006 and Official Gazette of Montenegro No. 21/2008, 30/2017 and 75/2018);

[77] Art. 29 of the Law on Expropriation (Official Gazette of the Republic of Montenegro No. 55/2000, 12/2002 - Decision US and 28/2006 and Official Gazette of Montenegro No. 21/2008, 30/2017 and 75/2018

[78] <https://www.vijesti.me/vijesti/drustvo/424538/vujovic-dok-je-ovakve-vlasti-niciji-zivot-sloboda-i-imovina-nisu-garantovani-Buljarica>

[79] <http://www.mans.co.me/wp-content/uploads/2020/10/Buljarica-Blago-Pastrovica-na-tajkunskoj-trpezi.pdf>

[80] <https://www.youtube.com/watch?v=TyfowNiBezI&t=172s> i <https://www.youtube.com/watch?v=82BkXOj0KI&t=2s>



Other major projects

SALINA

After the area of Salina "Bajo Sekulić" Ulcinj was declared a Nature Park [81] in June 2019, and then listed on the Ramsar wetlands list as a wetland of international importance [82] in September of the same year, not much has been done in the following year in order to take concrete measures to protect the area.

Namely, in December 2019, the Municipality of Ulcinj formed a Working Group for the development of the Plan for Salina Management, whose member is also a representative of the Center for Protection and Research of Birds (CZIP), a partner organization in the project. [83]



The working group also consists of representatives of the National Parks of Montenegro, the Ministry of Sustainable Development and Tourism (MSDT) and the Agency for Nature and Environment Protection, all with the aim of drafting an Area Management Plan. The group held four meetings, after which the draft plan was sent for public discussion in July this year. However, due to the bad epidemiological situation, the public hearing was postponed, and in the meantime, there has been no information when it would be held. [84] On the other hand, the National Parks of Montenegro will continue to manage Salina next year, until August 2021. [85]

On the other hand, after formalization of the protection of this valuable ecosystem, its essential protection remains in the hands of the Privatization and Capital Projects Council of Montenegro, which is yet to give an opinion on whether the land Salina used was also purchased in the privatization process. This was requested from the Council back in 2013 by the Commercial Court of Montenegro, before which a dispute is being conducted with the "Eurofond" fund, the owner of the company. The issue of resolving the ownership of Salina's land and the issues related to it are also recognized by the European Commission, which also identifies it as a key issue in its report on Montenegro's progress for 2020.

The position of the NGO sector, media and legal experts is that the land used by the company based on a concession for salt exploitation, can in no way be owned by Eurofond, bearing in mind that the concession was lost when the company went bankrupt.

[81] <http://www.ul-gov.me/Aktuelnosti/4482/Skupstina-Opstine-Ulcinj-izglasala-odluku-o.shtml>

[82] <https://www.ramsar.org/news/montenegro-names-ulcinj-salina-as-a-ramsar-site>

[83] Decision of the Municipality of Ulcinj no. 01- 441/19 dated 26.12.2019

[84] <http://www.ul-gov.me/javne-rasprave-i-objave/5004/Obavjestenje-Glavna-javna-rasprava-za-Plan.shtml>

[85] <https://www.vijesti.me/vijesti/drustvo/435419/opstina-ulcinj-spremna-za-solanu-parkovi-bi-novi-zakup>



Other major projects

THERMAL POWER PLANT PLJEVLJA

In June this year, the Electric Power Company of Montenegro (EPCG) signed a contract with a consortium of companies "Bemax", "BB Solar", "Permonte" and "Dec International" on the ecological reconstruction of the Thermal Power Plant in Pljevlja, worth € 54 million. [86]

The company "BB Solar", which is part of the consortium, is owned by Blažo Đukanović, the son of the President of Montenegro Milo Đukanović.



Previously, NGO Green Home, a partner organization in the project, organized two round tables in the eve of the conclusion of the contract, and a sort of energy transition that is now happening in Pljevlja. The first event was held in December 2019, on the topic "Challenges of ecological reconstruction of the first block of the Thermal Power Plant and heating of Pljevlja". [87]

With the participation of domestic and regional experts, local officials and representatives of the Thermal Power Plant, as well as citizens, the meeting stated that ecological reconstruction must meet the requirements of improving air quality, but also that the future must be planned without fossil fuels, while dependence on coal must break, which will contribute to a sustainable economy and a healthier environment. [88]

In addition, in cooperation with experts from the organization CEKOR from Serbia, the Coal Mine and the locals, Green Home worked on the development of "Analysis of the fair transition of the energy sector in Pljevlja." Accordingly, the second round table organized by Green Home was held in February 2020. [89]

With the participation of representatives of the Ministry of Economy, the Municipality of Pljevlja, regional experts and citizens, it was stated at the meeting that the Municipality of Pljevlja would contribute to a fair transition in the energy sector at the local level, as well as support all activities in creating a sustainable future for its citizens.



After preparing the draft of the mentioned analysis, it was sent for comment to all relevant institutions - including EPCG, TPP Pljevlja, Coal Mine, but also to representatives of the NGO sector and interested citizens, after which the final version of the analysis was prepared. [90]

[86] <https://www.epcg.com/media-centar/saopstenja-za-javnost/potpisan-ugovor-za-ekolosku-rekonstrukciju-te-pljevlja>

[87] <http://www.greenhome.co.me/index.php?IDSP=1202&jezik=lat>

[88] <https://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=726617&najdatum=2019-12-22&datum=2019-12-23>

[89] <https://www.vijesti.me/vijesti/drustvo/422328/pravedna-tranzicija-za-razvoj-odrzivih-ekonomija-i-novih-radnih-mjesta>

[90] http://www.mans.co.me/wp-content/uploads/2020/10/Green-Home_Zeleni-plan-za-Pljevlja_finalna-verzija.pdf



Other major projects

LAKE SKADAR

At the 39th session of the Standing Committee of the Berne Convention in Strasbourg, held 3-6 December 2019, this body of the Council of Europe opened the case of construction of the criticized tourist complexes "White Village" and Porto Skadar Lake in the heart of Skadar Lake, after many years of efforts by environmental organizations and part of the citizens to stop and prevent them. [91]



The decisions of the Secretariat of the Berne Convention state that Montenegro has not sufficiently fulfilled their previous recommendations, which already called on the institutions to suspend the further development of tourist complexes within Skadar Lake. In addition, it was stated that, through the opening of the case, the secretariat would especially monitor the audit of the Special Purpose Spatial Plan for the National Park Skadar Lake, which is expected to address protection zones and habitat mapping of protected species in a better way. [92]

At the online session held in April 2020, the Secretariat welcomed certain measures that were implemented, such as mapping the site, creating a list of habitats, as well as withdrawing the plan for building a commercial project. However, the body of the Council of Europe expressed concern over the announced construction of a road near Rijeka Crnojevića, the construction of road infrastructure and new tourist facilities and marinas, which are not in line with previous recommendations. [93]

Green Home sent a report to the Berne Convention Secretariat in late July, stating that there had been no substantial progress in implementing the measures given in December last year. In support of this, evidence was sent of the construction of the new road infrastructure that is contrary to the mentioned recommendations. What is also problematic is the announcement of the issuance of a concession for the tourist valorisation of the Besac fortress from the 15th century, as well as the construction of a new road and border crossing near the village of Ckla. [94]

[91] <https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=724441&datum=2019-12-06>

[92] <https://www.coe.int/en/web/berne-convention/2019-en>

[93] <https://rm.coe.int/report-of-the-bureau-meeting-7-8-april-2020/16809e4c1c>

[94] <https://www.gov.me/naslovna/vijesti-iz-ministarstava/224802/JAVNI-POZIV-za-sprovođenje-Javne-rasprave-o-Nacrtu-koncesionog-akta-u-postupku-davanja-koncesije-za-valorizaciju-nepokretnog-kul.html>



Other major projects

PROTECTED AREA OF KOTOR

On February 14, 2020, NGO Expeditio, a project partner, organized a round table on the state of the Natural and Culturo-Historical Area of Kotor [95], which is on the UNESCO World Heritage List. [96] The event was supposed to contribute to the public dialogue on the state and status of the Kotor area on the mentioned list, as well as to provide an opportunity to consider the necessary steps to get out of the current situation, in order to ensure long-term protection of exceptional universal value of the area.



Representatives of the Ministry of Culture, National Commission for UNESCO of Montenegro, the Municipality of Kotor (Secretariat for the Protection of Natural and Cultural Heritage and the Secretariat for Urbanism, Construction and Spatial Planning), the Directorate for the Protection of Cultural Heritage - Kotor Regional Unit, Public Company for Management of Marine Assets, NGO Friends of Boka Kotorska Heritage, as well as experts in the field of architecture, spatial planning and protection of cultural heritage, also took part at the event. The focus was on the current situation in the area of Kotor, spatial planning, management system and audit of the Management Plan - the issues that have been addressed in previous monitoring reports. [97]

[95] <https://radiokotor.info/clanak/drustvo/kapetanovi%C4%86-okrugli-sto-prilika-za-javni-dijalog-na-temu-stanja-i-statusa-podru%C4%8Cja-kotora-na-listi-svjetske-ba%C5%A0tine-/0>

[96] <https://whc.unesco.org/en/list/125>

[97] http://www.expeditio.org/index.php?option=com_content&view=article&id=2027:izvjestaj-sa-okruglog-stola-o-stanju-prirodnog-i-kulturno-istorijskog-podruca-kotora&catid=81:novosti&lang=sr&Itemid=569



Other major projects

SPATIAL AND URBAN PLAN OF THE MUNICIPALITY OF KOTOR

After the first public hearing organized in the period from April to July 2019, and based on the comments given by the UNESCO World Heritage Centre, the Draft Spatial and Urban Plan of the Municipality of Kotor was updated in February this year.

New public debate on the Draft Spatial and Urban Plan of the Municipality of Kotor and the Draft Report on Strategic Environmental Assessment, conducted by the Ministry of Sustainable Development and Tourism, was held in the period March 4-24, 2020. [98]

On March 24, 2020, NGOs EXPEDITIO and the Friends of Boka Kotorska Heritage submitted remarks and comments on the updated draft of the Draft Spatial and Urban Plan. The position of the organizations was that the draft did not follow the recommendations of the UNESCO World Heritage Committee. In addition, the planning of the bypass Škaljari - Kotor - Dobrota is again problematic, as well as leaving the possibility for construction in the bay Glavati. [99]

Spatial and Urban Plan for the Municipality of Kotor was adopted at the session of the Government of Montenegro on August 13, 2020. [100] Although still characterized by Expeditio as a very bad document, key remarks regarding planning of bypass in Škaljari and construction opportunities in Glavati Bay were nevertheless taken into account.

On July 29, 2020, within the project and due to the conditions caused by the Covid-19 virus pandemic, Expeditio held a public debate broadcasted on its Facebook page. [101] As part of the debate, a presentation was held on the current state of the Natural and Culturo-Historical Area of Kotor, with a review of key issues related to the protection, planning and management of the World Heritage Site. In addition, an article prepared by Expeditio and the Friends of Boka Kotorska Heritage for the 2020 World Heritage Watch report was presented. [102]

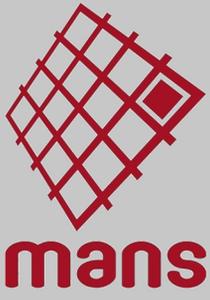
[98] <https://mrt.gov.me/ministarstvo/222325/Ponovna-javna-rasprava-o-Nacrtu-Prostorno-urbanistickog-plana-Opstine-Kotor-i-o-Nacrtu-Izvjestaja-o-strateskoj-procjeni-uticaja.html>

[99] http://www.expeditio.org/index.php?option=com_content&view=article&id=2033:primjedbe-i-komentari-na-nacrt-prostorno-urbanistickog-plana-opstine-kotor-iz-februara-2020&catid=81:novosti&lang=sr&Itemid=569

[100] https://www.gov.me/sjednice_vlade_2016/187

[101] <https://www.facebook.com/184411208424347/videos/966851220430827>

[102] <https://world-heritage-watch.org/wp-content/uploads/2020/06/WHW-Report-2020.pdf>



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