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Lipci Case 2008

How not to repeat it?

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Contents:

1. Introduction	4
2. Case description.....	5
3. Problem identification	9
4. Legislative framework	11
4.1 General information about inspection control	11
4.2 In the search for a competent inspection service.....	13
4.3 Remedy and compensation	22
4.4 Responsibilities of the Directorate of Transport towards the contractor.....	23
5. Epilogue of the Lipci case.....	24
6. Conclusions	25
7. Recommendations.....	27
Sources.....	29
Institute Alternative.....	30

1. Introduction

Over a year ago, the Montenegrin media have started reporting on the case of serious devastation of environment in area of Boka Bay (Bokokotorski zaliv). The devastation took place near the small seaside place Lipci, where 4200m² of the sea area has been illegally banked. Since the Ministries and their inspections could not agree upon who has the jurisdiction over the case for months, the police has stopped the construction works, the prosecutor has pressed charges against several persons, and the Basic Court in Kotor has reached its verdicts, sanctioning four individuals involved in the case.

However, the question that lingers is how was it possible that no state institution, in particular inspection services, assumed responsibility for the case and prevented the devastation. In the meantime, almost nothing has changed, and further cases of environmental devastation – yet on a smaller scale - recurred.

Therefore, the primary purpose of our research is to provide an answer to the question: What can be done to prevent cases such as the Lipci one?

With that aim in mind, we want to give the public a comprehensive overview of the case, events, actions of state bodies, statements and activities of other institutions and organizations, and then to determine the key problems, their causes and consequences. At the end, we want to offer the public, but first and foremost the decision-makers, the proposal to create such a legal framework and environment that will significantly reduce the possibility of a similar case happening again.

2. Case description

Natural resources are the greatest wealth Montenegro has. The uncontrolled urbanisation of the coastal area that has been taking place over the past few years is seriously hampering the beauty of the Montenegrin coast. The most serious environmental devastation in Montenegro took place in the Boka Bay, the area of Lipci, and was largely due to the inertia of the Montenegrin institutions, which allowed the devastation of a UNESCO world heritage site.

The problem has emerged in April 2008, when illegal construction activities started in the Lipci area. At that time, the construction of the regional road Risan-Sopot-Morinj was ongoing. 'Morsko Dobro' - a public enterprise charged with the protection of Montenegrin maritime resources - attempted to control the development in the area, along with the Water Management Inspection operating under the aegis of the Ministry of Agriculture, Forestry and Water Management.

On 09 April 2008, the Water Management Inspection conducted a routine control of the Boka Bay area, along with the representative of 'Morsko Dobro' (department of sustainable development). During the inspection of the Lipci site, they have noticed that some rocks had collapsed into the sea. The Water Management Inspector believed that the toppled rocks were caused by the construction of the regional road Risan-Sopot-Morinj, and attempted to photograph the hinterland and the stones that collapsed into the sea. However, a representative of the company that was doing the construction did not allow the photographing to take place, claiming that it was dangerous to stop in that location.¹ Only on 12 August 2008, did the Water Management Inspection come to knowledge that the company who undertook the construction in the Lipci area was 'Tani' from Nikšić.

The aforementioned implies that physical evidence that could prove the extent of damage in the Lipci area early in April is unavailable, because 'Tani' prevented the photographing of the site. It is, however, subject to debate whether 'Tani' had the right to prevent the photographing of the site. In turn, the Water Management Inspection did not photograph the site, which would have served as reference for determining the level of damage in the Lipci area. However, in its report related to the routine inspection of 06 April 2008, the Water Management Inspector noted that, indeed, there was a real possibility of further toppling, and that visibility was reduced, because of the wind and the rain. She added that – at the time – there was no sea-wall, and that no development with the construction mechanization was taking place at the sea plateau, so that the Water Management Inspection could have further competence to inspect.² Following these events, the Water Management Inspector decided that

¹ Data provided by the Ministry of Agriculture, Forestry, and Water Management, No. 060-11/09-0401-60/1, in reply to the request for access to information filed by Institute Alternativa on 06 April 2009.

² Data provided by the Ministry of Agriculture, Forestry, and Water Management, No. 060-11/09-

other inspections in charge should be included – pursuant to Law on Water – and that a combined inspection of the Lipci area should be undertaken, in order to determine the factual situation. According to press, the construction of the regional road Risan-Sopot-Morinj was stopped on 16 April 2008.³

The PR of ‘Morsko Dobro’, Sandra Radulović, noted that immediately after the inspection of 06 April 2008, they informed the Ministry of Economic Development and the Ministry of Transport, Maritime Affairs and Telecommunications that ‘peculiar development’ was taking place in the Lipci area.⁴ However, the first request for inspection of the Lipci area by ‘Morsko Dobro’ to the Water Management Inspection was lodged on 07 August 2008 (ref. 327/08-0703-45).⁵

On 09 July 2008, the officials of the Municipality of Kotor made a separate appeal to the Department of transport in the Ministry of Economic Development, to the Ministry of Transport and to ‘Morsko Dobro’. Their appeal was grounded on the intensification of activities in the area of Lipci from 15 June to 15 August 2008. During that period, the company ‘Tani’ - owned by the Niksic-based businessman Ranko Radulovic – damaged a part of the Montenegrin coastal area. The devastation was caused by the fact that ‘Tani’ discarded construction materials on the coastal area and in the sea. Moreover, the development that ‘Tani’ was undertaking was not formally approved by the Montenegrin authorities. On 22 July 2008, the Montenegrin Water Management Inspection filed the case, in which it has been confirmed that the ‘natural configuration of terrain has been damaged, and the coastal area has been devastated.’⁶ Despite the appeals of a number of NGOs, the construction works in Lipci proceeded until mid-August. On 12 August 2008, by the police department of Herceg Novi stopped the construction in Lipci, due to traffic ‘safety reasons’.⁷ Yet, by that time, the severity of the damage to the Montenegrin coast was irreparable.

Montenegrin public became acquainted with the issues surrounding the devastation of the Lipci area through the writings of the daily *Vijesti* and the weekly *Monitor*. However, the media appeals to act and prevent the further damage to the Montenegrin coast did not resonate well with the Montenegrin authorities, who were faced with a conundrum caused by overlapping or insufficient legal competences, and poor capacities to enact the powers conferred upon them by law.

Two months after the devastation of the area of Lipci, neither had the state authorities have made an action to amend the case, nor had the perpetrators been brought to justice. Several institutions claimed that they had no jurisdiction over the case, while some pointed to the institutions of higher instance. Ministry of Transport, Maritime Affairs and Telecommunications said that the developments in Lipci, related to the

0401-60/1, in reply to the request for access to information filed by Institute Alternativa on 06 April 2009.

³ *Vijesti*, 17 April 2008

⁴ *Monitor*

⁵ Data provided by the Ministry of Agriculture, Forestry, and Water Management, No. 060-11/09-0401-60/1, in reply to the request for access to information filed by Institute Alternativa on 06 April 2009.

⁶ ‘Prijava No. 129’, *Republička Vodoprivredna Inspekcija*, 22 July 2008

⁷ *Monte Portal* (13 August 2008), At:

http://www.monteportal.com/index2.php?option=com_content&do_pdf=1&id=583 [accessed; 22 May 2009]

main road Risan – Herceg Novi, were unrelated to the construction of the road Risan Grahovo. The Mayor of Kotor – Marija Catovic – said that the municipality of Kotor had no jurisdiction over the case, and that they had forwarded their request for action to the relevant line Ministries. The chief Inspector for the protection of environment at the Ministry of Tourism and Environmental Protection– Vesna Zarubica – said that, on grounds of a telephone call reporting the construction in Lipci, this inspection concluded that the case did not fall within their competence.⁸

According to *Vijesti*, NGOs dealing with environmental protection were silent in relation to this case.⁹ By contrast, the appeals of the NGOs to stop the devastation of the Lipci area were led by NGOs MANS and EXPEDITIO. In a common effort, these NGOs appealed both to local authorities and to UNESCO – World Heritage Centre. On 04 September 2008, MANS announced that despite this organisation’s initiatives submitted to local inspection to deal with the case, no adequate response had been received. On the very day of MANS’ announcement, the Government of Montenegro debated the problem of illegal construction in Montenegro. The Government concluded that the line ministries and the inspections should coordinate their actions and cooperate in their attempts to prevent illegal construction.¹⁰

On 09 September, Ranko Radulovic was arrested over the case of Lipci in Boka Bay. A fortnight before that, the police issued a warrant for his arrest, in light of illegal occupation of terrain in long term. At the time of the arrest, Montenegrin daily *Vijesti* reported that there were allegations that arrested Radulovic had previously been involved in cigarette smuggling, and other illegal activities. According *Vijesti*, Radulovic also had close liaisons with the Montenegrin ruling party, which has been cited as a possible reason for no action by the Montenegrin authorities.¹¹ Two days after the arrest, the Kotor-based Judge Inspector – Spiro Pavicevic- stipulated a 30 days detention to Radulovic over Lipci case. On 30 September 2008, Judge Pavićević extended the investigation in the Lipci case.¹²

Following another request of ‘Morsko Dobro’ dated 23 September 2008 (ref. 0201-1865/13), the Water Management Inspection examined the Lipci site on 01 October 2008. They noted that, across the connection for the road Risan-Zabljak (that was under construction) and close to the main road Kotor-Herceg Novi, there was a rock plateau in the sea. The area of the plateau was approximately 35x120 meters, and the top of the plateau was covered in boulder. The inspection also reported that a large flat area of the hill was visible. That area of the hill was changed due to disinterring, mining and machine-based digging. The Water Management Inspection also determined that the plateau in the sea was made out of the material off the hill, which was dragged to the coast and dumped there. However, in the absence of data related to the sub-water area, the Inspection was unable to determine the exact amount of the waste material dumped into the sea. The inspection has also noted that the termination of construction was completed neither by the investor of the road Risan - Zabljak

⁸ *Vijesti* (11 August 2008)

⁹ *Vijesti* (11 August 2008)

¹⁰ Data provided by the Ministry of Agriculture, Forestry, and Water Management, No. 060-11/09-0401-60/1, in reply to the request for access to information filed by Institute Alternativa on 06 April 2009.

¹¹ *Vijesti*, 10 September 2008

¹² *Vijesti*, 01 October 2008

(Direction for the Construction of Roads of Montenegro), nor by the constructor ('Tani' Company). Thus, there was still immediate danger of rocks toppling down the damaged hill. The Water Management Inspection concluded that illegal construction was taking place in the area.¹³

Late in October 2008, the Kotor-based Prosecutor – Boris Savic – pressed charges against four people over illegal construction works in the area of Lipci. The indictees included: Ranko Radulovic -the owner of the Niksic-based company 'Tani'; Rajko Radulovic – the manager of the sector for planning, development and control in 'Morsko Dobro'; Milos Markovic – the head of the construction site in Lipci; and a water-management inspector, whose name Savic wished not to reveal for the time being. At that time, the daily *Vijesti* wrote that it was likely that the last name on the indictment was the one of Biljana Joncic. All suspects denied allegations of criminal activity.

¹³ Data provided by the Ministry of Agriculture, Forestry, and Water Management, No. 060-11/09-0401-60/1, in reply to the request for access to information filed by Institute Alternativa on 06 April 2009.

3. Problem identification

The problem related to the case of Lipci can be seen at two interlinked levels: a) the devastation of environmental resources of Montenegro; b) Overlapping and insufficient legal and enforcement powers of Montenegrin institutions to deal with environmental devastation.

a) Devastation of environmental resources of Montenegro

The coast of Montenegro has been marked as the country's 'golden goose', which attracted foreign tourists owing to its exceptional natural beauty.¹⁴ Moreover, the area of the town of Kotor - and its surroundings - has been enlisted as a UNESCO's World Heritage site since 1979. However, in the past few years, this area has been subject to increased construction and development, most of which has been uncontrolled and damaging to the environment.

In fact, in 2003, UNESCO's mission pointed to this problem as detrimental for the Boka Bay area. Julien Braithwaite, a British diplomat, stated that 'an area of exceptional beauty, a designated UNESCO World Heritage Site, a place that has survived the Romans, the Ottomans, the rise and fall of the Venetian and Habsburg Empires, Tito's Yugoslavia, and the wars of the 1990s, will, in a few short years have been transformed by corruption and the worst kind of unregulated development.'¹⁵

The case of Lipci is even more a cause of concern, given its proximity to archaeological sites, which are of immense cultural value to Montenegro. The construction that took place in the area changed the outlook of the Boka Bay in such a manner that it represented a clear devastation of the country's natural and cultural resources.¹⁶

For the prospective development of Montenegro, this is even more emphasised, as the country's greatest asset is tourism. Tourism and a large share of the country's economy, in turn, depend on the natural and cultural heritage Montenegro has to offer to its visitors. Consequently, at the time when environmental issues are a great concern for the majority of the world's developed countries, the case of Lipci is rather alarming.

b) Overlapping and insufficient legal and enforcement powers of Montenegrin institutions to deal with environmental devastation

A further problem related to the case of Lipci, which is a cause of major concern in Montenegro was the inability of the state's institutions to take appropriate actions in order to prevent the devastation of the environment. For almost half a year since the case has been raised as a point of concern, most of the Montenegrin institutions

¹⁴ British diplomat Julien Braithwaite.

¹⁵ Ibid.

¹⁶ Letter of NGOs MANS and EXPEDITIO to UNESCO, 13 August 2008

showed no sign of concrete action. Rather, while they determined the jurisdiction over the of the case, the damage in Lipci reached such proportions that a permanent scar has been left on the face of the beautiful Montenegrin coast.

Julien Braithwaite noted that had such a dilapidation of the environment taken place in the United Kingdom, the Prime Minister would be subject to series of investigations both through the Parliament and in the media. The British diplomat expressed his concern that the Montenegrin authorities allowed ‘the destruction of the country’s heritage to build something that diverts the state’s resources from much more important projects, such as improving the water and electricity infrastructure, or building a road that allows the thousands of tourists who visit Croatia to continue on to Montenegro’.

The Ministry of Tourism and Environmental Protection, and the Montenegrin Ecological Inspection, stated they were not in charge of the case of Lipci either. Given the fact that the deployment of the construction waste into the sea took place, the Ministry of Tourism noted that the Water Management Inspection was the one to be in charge of the case. In a similar fashion, the Communal Police and the Construction Inspection of the Municipality of Kotor transferred the responsibility to ‘Morsko Dobro’ and the state’s authorities. On 21 July, the Construction Inspection noted that the material that was discharged into the sea was used for the construction of the road Risan-Grahovo. Following the appeals of the NGO sector, early in September, the Montenegrin Construction Inspection reacted that the construction in the Lipci area was unrelated to the construction of the road Risan-Grahovo. Consequently, the case was not under the jurisdiction of the Construction inspection.

It is remained unclear, thus, which institution is in charge of implementing Article 21 of the Law on Environmental Protection (Official Gazette of Montenegro 51/08), pursuant to which ‘it is forbidden to conduct activities and actions that destroy maritime habitats’, which occurred – among other issues – in the case of Lipci.¹⁷ This is aggravated by the fact that, according to Article 417 of the Montenegrin Criminal Code, authorities are bound to act. Pursuant to the same article, inaction implies the responsibility of the authorities for the deeds committed. Regretfully, in the case of Lipci, none of the Montenegrin officials has taken the responsibility for not preventing the devastation of the country’s natural heritage.

Hence, the authorities failed to identify and recognize a major problem that was damaging the natural heritage of Montenegro amidst the tourist season. Eventually, in mid-August, the development in Lipci has been stopped, following the action of the police. Montenegrin authorities have dealt with the case in September and in October 2007. Still, such a devastation of the natural and cultural heritage could have been prevented had the Montenegrin institutions not been trapped in a vicious circle of inactivity.

¹⁷ Environmental Protection Law (Official Gazette of Montenegro 51/08),

4. Legislative framework

4.1 General information about inspection control

Inspection control in Montenegro is regulated by the Law on Inspection Control¹⁸. Several provisions of this legal act are particularly significant in relation to the incident after which the case Lipci became a topic in the media and the public, and in relation to the attempt of the Water Management inspection service and the inspection service of 'Morsko Dobro' to perform an insight into the factual state on the location in April 2008.

Could the contractor prevent the exercise of inspection?

Under the Law on Inspection Control, the subject of inspection is required to act upon the motion or order of the inspectors.¹⁹ The subject of the inspection is obliged to facilitate smooth performance of the inspection, to provide information, documentation or data that are necessary for the exercise of inspection. Also, under the same Law, the subject of inspection is required to ensure the conditions necessary for undisturbed operation and the determining of the facts by the inspector.²⁰ The same Law shows that the only thing that the subject of inspection (in this case, company 'Tani' or its representatives) could do when the joint inspection of 'Morsko Dobro' and the Water Directorate tried to perform an insight into the facts, is rejecting to sign the inspection log if they disagreed with the facts mentioned in this document.²¹ This act, however, does not retain further inspection control process.

Under the Law on Inspection Control, the inspection process includes the exercise of control, decision-making on the rights and obligations of the subject of inspection in the process and takes and carries out administrative measures and actions.²² If the person interferes with or impedes the exercise of inspection control, the inspector has the duty of notifying this person or distancing them from the site, and if proven necessary, may impose a fine.²³ If these measures do not enable undisturbed inspection, the inspection is obliged to seek police assistance, which in turn is obliged to immediately take measures and enable the inspector is able to perform his task unobstructed.²⁴

According to Law on Inspection Control, the subject of inspection will be liable to pay a fine amounting from ten to three hundred times the amount of the minimum wage in the case of not permitting the inspector to perform inspection undisturbed or in the cases of: not providing conditions for unimpeded operation and the determination of the facts; not allowing the exercise of the inspection control; not

¹⁸ Official gazette of Republic of Montenegro, No. 39/03

¹⁹ Law on Inspection Control, Article 20.

²⁰ *Ibid.* Article 21.

²¹ *Ibid.* Article 22.

²² *Ibid.* Article 25.

²³ *Ibid.* Articles 17 and 28.

²⁴ *Ibid.* Articles 28 and 29.

complying with commands of the inspectors; not notifying the inspector; or failing to implement the measures ordered by the inspector within the specified time.²⁵

Unknown contractor?

After the media published the first allegations of illegal construction and destruction of the environment in Lipci, the issue of who is behind this case, or who performs the works was speculated for a long time. According to the Law on Inspection Control, in cases where the inspector can not determine who the subject of control is, the inspector is obligated to leave a notice at the site to the unknown entity informing them about the date and time when the next control will be performed. If the unknown subject of inspection does not respond to the call, the following inspection will be carried out without the presence of the subject of control, and will be attended by an official or another party.²⁶

What could the inspection services do?

When during the process of inspection control it is estimated that a law or some other regulation has been violated, or that the prescribed standards or norms are not respected, the inspector is required to undertake the following administrative measures and actions:

- order the suspension of construction or execution of works;
- order the demolition, removal of illegally erected or started building, and removing items from a certain area;
- prohibit the use of premises, instruments of labor, equipment, facilities, business and other objects, transport and other means;
- prohibit the movement of persons in a particular area, where there is danger to life and health;
- prohibit the performance of any act which endangers the environment, property, or brings into danger the life or health of persons;²⁷

When it is estimated that there are large scale irregularities, or irregularities that are threatening the life or health of persons or physical environment or otherwise specified by law, the **inspector is obliged to prohibit the performance of activities** by sealing areas, buildings, building sites, equipment, labor resources and other means in order to eliminate irregularities.²⁸

The procedure following the applications and requests on the behalf of inspectors is urgent. The authority in charge should immediately take the requests and applications of inspectors into consideration, and not later than within eight days from the date of their submission.²⁹

²⁵ *Ibid.* Article 73.

²⁶ *Ibid.* Article 35.

²⁷ *Ibid.* Article 16.

²⁸ *Ibid.* Article 55.

²⁹ *Ibid.* Article 64.

Joint inspection control

Law on Inspection provides that in carrying out inspection, the inspection authorities are required to cooperate with other agencies and organizations. State organs, organs of local self-government and other bodies and organizations are obliged, at the request of the inspectors, to submit the required data and information necessary for the exercise of their functions.³⁰

In accordance with Article 67 of the Law on Inspection Control, several inspection services will participate in inspection control in order to, among other things, eliminate the immediate danger to life and health of people and property of higher value; in order to undertake urgent measures that cannot be delayed; in order to control objects of special importance for tourism, trade, catering, transport; due to the complexity of inspection control that is needed or significance of eliminating irregularities; in order to verify the petitions or complaints that fall into the jurisdiction of two or more administrative authorities. Joint inspection is thoroughly regulated by Government's **Regulation on Joint Inspection**³¹. According to Article 2 of that Regulation, a joint inspection is carried out under the order of the Government of Montenegro and the working bodies of the Government, or on the basis of an agreement of two or more heads of the inspection services.

Given the complexity of the situation that emerged due to environmental devastation in Lipci - and especially the fact that the various inspections and state authorities declared a subject that should have been a point of interest for many of them to be outside their competence - we believe that **the responsibility for what happened rests with the Government**, which was supposed to instruct the performance of a joint inspection, when the heads of inspection services did not have the will to do the same on their own initiative.

4.2 In the search for a competent inspection service

In the Lipci case, one of the key issues raised was which inspection service had competence to perform the control and obtain insight into the facts, or to stop work and take other administrative procedures specified by law. Various inspection services transferred responsibility among themselves and proclaimed the issue to be outside their competence, as did a number of state agencies. To respond to this complex issue, it is necessary to resort to extensive legislation.

When it comes to **protecting nature and environment**, there are two key laws: the Environmental Law³² and the Nature Protection Law³³.

³⁰ *Ibid.* Article 63.

³¹ Official gazette of Republic of Montenegro, No. 48/03

³² Official Gazette of Republic of Montenegro, No. 48/08.

³³ New law regulating this area has been adopted and entered into force exactly at the time the events that are subject of this study were taking place. New Law on Environment entered into force in August 2008, replacing the old one, which was binding since 1996.

The **Environmental Protection Law**³⁴, which was in force from 1996 to August 2008 when the new one entered into force, prohibited:

- any discharge of polluting substances into the environment above the prescribed limits, as well as performing other actions that may endanger determined level of environmental quality;
- the development in the protected natural resources, which threaten the natural balance, biological diversity, hydrological, geomorphological, geological, cultural and landscape values;
- the disposal of all types of waste, except in areas designated for that purpose.³⁵

The law is explicit in that the legal or natural person who causes pollution of the environment, which is familiar or could have been familiar with the circumstances that indicate a danger to life and health of people and a danger to the environment, must immediately take measures to remove the hazard and avoid further damage. The inspection in charge must be notified about these measures.³⁶ Legal entity or a person that causes pollution of the environment **has the obligation of restoring it**, and shall bear all expenses of any damage caused by pollution, as well as costs related to taking measures to remove the danger of pollution.

Legal entity or person is obliged to produce a rehabilitation program at their own expense and implement it within the deadlines set by the Ministry of Spatial Planning and Environment in case it exceeds the prescribed level of emissions or does other damage to the environment through its activities.³⁷

In the cases of emergency, in order to prevent significant damage or limit the negative effects on the environment the Ministry may, at the expense of polluters, take all necessary measures and restrictions, including the stopping the activities of pollutants.³⁸

If in the course of performing the inspection control, the environmental inspector assesses that in addition to violating this law, some other law or regulation which deals with the issues of importance to the protection of the environment or particular segments of the environment is violated, they are required to notify another inspection authority in charge, in addition to taking measures that that they are authorized to take.³⁹ The other inspection in charge is obliged to report on the measures taken by the environmental inspectors. In cases where the environmental inspector finds such irregularities and illegal acts that fall into the competence of other inspection bodies as well, they are obliged to inform the line Minister, who will in turn initiate the proceedings for the joint exercise of inspection without delay.⁴⁰

³⁴ Official Gazette of Republic of Montenegro, No. 12/96.

³⁵ Environment Protection Law (12/96), Article 9.

³⁶ *Ibid.*, Article 29.

³⁷ *Ibid.*, Article 31.

³⁸ *Ibid.*, Article 32.

³⁹ *Ibid.*, Article 45.

⁴⁰ *Ibid.*, Article 45.

Supervision over the implementation of **Environmental Law**⁴¹ and regulations enacted pursuant to this Act is performed by the Ministry of Spatial Planning and Environment (at the time the devastation of Lipci took place, the competent authority was the Ministry of Tourism and Environmental Protection). Inspection over the implementation of laws and regulations enacted pursuant to this Act is performed by Environmental Protection Agency, in accordance with this Law and the Law on Inspection Control.⁴²

In carrying out inspection control, special attention is paid to:

- monitoring environmental conditions;
- development, implementation and monitoring of performance of the measures from rehabilitation programs;
- implementation of obligations from the ratified international agreements in the area of environment protection;⁴³

To eliminate the irregularities **ecological inspector** is, in addition to the rights and duties stipulated by the Law on Inspection Control, among other things, obliged to order the conduct of monitoring of environmental conditions in the prescribed manner.⁴⁴

Environmental Protection Agency, or body of state administration responsible for the protection and rescue in case of imminent danger of harm, may:

- seek information from the pollutants on immediate danger from damage or on cases in which there is a suspicion of immediate danger from damage;
- request the pollutants to take the necessary actions and measures to prevent damage to the environment or to endangering the protected species;
- give directions to the pollutant regarding the necessary prevention measures and activities;
- in cooperation with other bodies responsible for undertaking intervention, initiate activities and take necessary measures to prevent harmful consequences.⁴⁵

Article 21 of the **Nature Protection Law** provides that it is forbidden to perform activities that are harmful to the marine habitat.

Supervision over the implementation of the Nature Protection Law is performed by the Ministry of Spatial Planning and Environment and the Municipality or another branch of local government. Inspection control within the jurisdiction of the Ministry of environmental is carried out by the ecological inspection in accordance with this law and the law regulating the inspection control in general.⁴⁶

In carrying out inspection control, special attention is paid to:

⁴¹ Official Gazette of Republic of Montenegro, No. 51/08.

⁴² Environmental Law, Articles 10 and 66.

⁴³ *Ibid.*, Article 67.

⁴⁴ *Ibid.*, Article 68.

⁴⁵ *Ibid.*, Article 46.

⁴⁶ Nature Protection Law, Article 114.

- the usage of protected natural resources and other parts of nature;
- the implementation of the conditions and measures of nature protection;
- the enforcement of rehabilitation measures;
- the enforcement of direct protection, preservation and usage of protected natural resources;⁴⁷

In carrying out environmental inspection control, ecological inspector is, among other things, required to undertake the following administrative measures and actions when he finds that a law or regulation has been violated:

- order the implementation of conditions and enforcement of nature protection measures;
- prohibit the actions that can cause changes and damage to the protected natural resources;
- order the monitoring of the nature conservation status;⁴⁸

Maritime Public Domain Law⁴⁹ stipulates that the safeguards of the maritime public domain include: protection from pollution, hazardous and harmful substances from land and from vessels. Hazardous and harmful substances are considered to be those that, once disposed into the sea, can harm the life and health of humans, affect the survival of plant and animal life, or cause a change of physical, chemical or natural characteristics of seawater. **Harbor Master's Office** is in charge of protecting the maritime public domain.⁵⁰

Harbor Master's Office in Kotor, is a department for the Maritime sector in the Ministry of Transport, Maritime Affairs and Telecommunications. It has been granted jurisdiction by the Ministry to perform inspection control tasks, as well as administrative and other professional and technical jobs concerning the safety of navigation, administrative and other tasks related to maritime navigation.

The basic duties of the Harbor Master's Office include:

- conducting the exams for authorizing the crew of sea vessels and exams for the heads of boats serving non-economic purposes;
- issuing of authorizations, maritime permits and endorsements to the ships crews;
- evidencing of ships and boats in the Register of ships and boats;

⁴⁷ *Ibid.*, Article 115.

⁴⁸ *Ibid.*, Article 116.

⁴⁹ Maritime Public Domain Law, Official Gazette, No. 14/92, adopted in 199. The report of the State Audit Institution on the control performed in 'Morsko Dobro', no. 40115-05-151/06 15 in October 2009, states the following concerning this law: 'The existing law has not changed although there was a need for a number of issues important for the functioning of the company to be more specifically defined. The current application of the law showed that it is incomplete in certain segments. Parliament of Montenegro adopted the Decision on the adoption of spatial plans for areas of special purpose for maritime public domain, the Law on State Property, the Law on Property Relations, the Law on Concessions, Law on Harbors and other laws. These regulations created conditions for the adoption of a new law on marine goods or amendments to the existing one.'

⁵⁰ Maritime Public Domain Law, Article 17.

- inspection of vessels and other waterway facilities, the maintenance of order in harbors and other parts of the coastal sea-belt, the control of traffic of foreign and domestic ships, yachts and boats;
- issuing of permits, approvals and consent for the ships, foreign yachts and boats to enter and leave the ports covered by Harbor Master's Office in Kotor.
- Harbor Master's Office in Kotor has jurisdiction over the territory of the Bay of Kotor to the Cape Platamuni and the Croatian border.⁵¹

Therefore, the list of competencies of Harbor Master's Office does not contain the control of substances that are discharged from the mainland into the sea, as stipulated by the Maritime Public Domain Law.

It is especially important to review the Water Act⁵², with respect to the fact that Biljana Joničić, water management inspector, was found guilty of unconscious job performance and was given a six months probationary sentence. Supervision over the implementation of the provisions of the Water Act and the regulations enacted pursuant to this Act is carried out jointly by the Ministry of Agriculture, Forestry and Water Management; the Ministry of Health; Ministry of Spatial Planning and Environment; the Ministry of Economy and of the authorities of local government thus empowered to act.⁵³

Inspection control tasks in the field of water management and water estate are conferred to the Ministry of Agriculture, Forestry and Water Management, through the Water Management Inspection.

As part of its duties, Water Management Inspector supervises the construction of buildings and the performing of other work that may cause qualitative or quantitative changes to the natural or the artificially established water regime. Water Management Inspector also supervises the conditions prescribed by the water regulations. It also controls whether the way of using water objects and facilities is in accordance with the issued water consent, water permits and certificates.⁵⁴

When the Water Management Inspector finds that the law or regulation has been violated or that the standards and norms are not respected, the water management inspector is required to, in addition to administrative measures and actions prescribed by the law regulating the inspection control in general, take the following administrative measures and actions:

- prohibit or suspend the works that are performed contrary to the issued water consent or permission or without water consent, water permits or certificates;
- order the removal of the causes of pollution in the water facility, water soil or water regime and restoring it to the original condition;
- order the demolition of buildings and facilities and the removal of certain items, and other material that may violate established water regime.⁵⁵

⁵¹ <http://www.kapetanijakotor.org.me/lk/pages/article.php?id=13>

⁵² Official Gazette of Republic of Montenegro, No. 27/07

⁵³ Water Act, Article 161.

⁵⁴ *Ibid.*, Article 162.

⁵⁵ *Ibid.*, Article 163.

According to Article 87 of the Water Act, in order to protect the water from pollution, it is prohibited to emit the following substances from the coastal zone or into the spring zone: mineral oils which directly or indirectly get into the water and mineral oils that come from any device used for transporting to or from a sea vessel, as well as other substances that directly originate or are related to exploration, exploitation and processing in the coastal area, which directly or indirectly may reach the water.

Water Act prescribes that a legal entity or a person who causes damage to the water facility, water soil, water regime, or worsens the erosion on the erosive area, **shall, within the period specified by the inspection authority in charge, take action to re-establish the state that was before damage occurred.**⁵⁶ If they do not take action within a specified period, action will be taken by the authorized administrative body or an authority of local government at the expense of those that caused the damage. Ministry is responsible for determining the criteria for assessing the direct and indirect damage and the specific measures to be taken in order to repair them. According to Article of this Act 104, commercial companies, other legal entities and entrepreneurs, who are the owners and users of land and buildings in erosive areas are obliged to build and maintain protective facilities and carry out protective works in accordance with the law.

Water consents must be obtained for facilities used for: exploitation and storage of river sediment, gravel, sand, stone and other material from the river bed, shoal and coast onto the water soil and natural watercourses; natural and artificial reservoirs in the sea and in areas threatened by erosion; opening quarries for construction works, including re cultivation of exploitation fields and the immediate environment after the completion of exploitation; storage of materials that can pollute the water on the banks; and depots for non-hazardous waste.⁵⁷

In addition, the Water Act stipulates that, for the purposes of preservation and maintenance of natural and artificial water objects, facilities for water protection and other purposes, to prevent deterioration of the water regime and ensure the passage of large waters and protection from harmful effects of waters, as well as environment protection, among other things, the following is prohibited:

- digging and disposing of material on dams and other water facilities; feeding the herd; towing cut down trees; crossing and driving a motor vehicle; except in designated areas; and performing other actions which may endanger the stability of these objects;
- on the water soil⁵⁸: building permanent and temporary facilities and thus reducing the porous capacity of the banks; disposing of solid waste, hazardous and harmful materials; storing wood and other solid material in a way that hampers the passage of high waters; performing exploitation of river deposits without the prescribed consent;
- disposing solid waste and other materials into watercourses, reservoirs, melioration and other channels; emitting polluted water or other substances and carrying out development works, including the extraction of materials, which can damage the bed

⁵⁶ *Ibid.*, Article 150.

⁵⁷ *Ibid.*, Article 115.

⁵⁸ According to the Water Act, water soil is made of riverbed and banks of the water stream, lake, coastal sea, accumulations and other surface waters.

and the banks of natural and artificial watercourses,; changing the water routes, the level of water quantity and water quality; threatening the stability of protective and other objects; or impeding the maintenance of the water system;⁵⁹

For a long time, the media speculated that the illegal construction and devastation in the area Lipci was actually related to the Lipci-Knežev Laz road construction works. In effect, a subcontractor working on this route used the opportunity to carry out construction plans that were not part of the official construction of the road, once and the official works were stopped amidst the tourist season. However, given that the work was conducted in the vicinity of the main road M-2, with frequent interruptions of traffic, and that depositing of the construction and other materials was performed in the **protective zone of a public road**⁶⁰, it is necessary to pay attention to the **Law on Roads**⁶¹, and supervision over its provisions. Control over the enforcement of the Law on Roads and regulations enacted pursuant to the law are carried out by the Ministry of Transport, Maritime Affairs and Telecommunications. The state inspector is in charge of inspection control tasks for the public roads, while the roads within the municipal authority are supervised by the inspection of local government.⁶²

Among other things, the inspector is required to inspect the construction and maintenance works on roads, parts of road and a road facilities, control their condition as well as the course of traffic on a public road. He is also authorized and required to order a ban or suspension of works that are carried out contrary to law and other regulations, technical standards and quality norms related to building or performing the maintenance of the public roads. The inspector is required to order the demolition and removal of landfill and waste disposals, built or set contrary to the provisions of the Law on Roads. Also, the inspector has the competency to ban works that are performed in the vicinity of a public road, its part or a road facility, that may endanger their stability and security of traffic.⁶³

In order to protect public roads, it is prohibited to temporarily or permanently occupy a public road or its part, or perform any works on the road that are not related to the maintenance or reconstruction. This includes disposing of land, waste, construction and other materials in the travel and the protective zone. Also, it is prohibited to dispose of embankment material, stones, quarry, sand, gravel and other materials on the road, or down its sides and conduct other similar activities, which could damage the public road or road facility, or interfere with or endanger traffic on a public road.⁶⁴

According to Article 66 of the Law on Roads, construction and other material that is not used for the maintenance of public roads must not be kept in the vicinity of the public road, on distance of fewer than five meters starting from the outer edges of road zone. At a public road and road facilities or in their vicinity, it is not permitted to carry out works which could damage or endanger them, increase maintenance costs or

⁵⁹ *Ibid.*, Article 141.

⁶⁰ Protective zone of the public roads is an area bordering the roads, wide from ten to sixty meters, depending on the kind of road and the object that is built, in which building is not permitted.

⁶¹ Official Gazette of Republic of Montenegro, No. 42/04.

⁶² Law on Roads, Article 83.

⁶³ *Ibid.*, Article 84.

⁶⁴ *Ibid.*, Article 65.

endanger transportation. Housing and other buildings, facilities, installations and other objects cannot be built at a certain distance from public roads.⁶⁵

If the contractor or other entity that exploits the facility near a public road or on the road mining is performed (quarry, etc.) they are obliged to provide not only the traffic signs but also to ensure the presence of persons that will regulate the traffic at the distance of at least 200 meters from the place where the mining takes place.⁶⁶

The Ministry of Spatial Planning and Environment and the administration authority, or local self-government are charged with monitoring of the implementation of the **Law on Spatial Development and Construction of Structures**⁶⁷ and other regulations from the area of spatial development and construction of structures.⁶⁸

In accordance with the aforementioned Law, inspection supervision activities in the area of spatial development and construction of structures, are conducted by the administration authority within its prescribed competences. Inspection supervision activities in the area of construction are also conducted by authorized inspections in accordance with special regulations. Inspection authorities thus referred to are obliged to inform each other on administrative measures and actions undertaken within the prescribed competencies.

As the disputed works in Lipci took place in the area of maritime public domain, that is an area of special purpose, the State Construction Inspection was in charge of monitoring this area. This conclusion is based on the fact that the spatial plan of special purpose areas, being a state planning document, is produced by the state authorities and not local government. Therefore, the state has competencies in this area, including the issuing of permits for building locations or reconstruction of buildings and execution of works through which the space is developed.⁶⁹

Inspection in the field of spatial planning

The administration authority conducts inspection supervision in the area of spatial development, through urban planning inspectors and **environmental protection inspectors**. The environmental protection inspector verifies whether the building permit has been issued for the construction of a structure on the territory of Montenegro. In case the environmental protection inspector identifies that the construction of a structure is performed without the building permit, they will be obliged and authorized to order the demolition of such a structure.

Inspection in the field of construction of structures

Administrative inspection in the field of construction of structures is carried out through the **urban planning inspection service**. Urban planning inspector conducts

⁶⁵ *Ibid.*, Article 70.

⁶⁶ *Ibid.*, Article 81.

⁶⁷ Official Gazette of Republic of Montenegro, No. 51/08

⁶⁸ Law on Spatial Development and Construction of Structures, Article 144.

⁶⁹ Law on Spatial Planning and Arranging, Official Gazette of Republic of Montenegro, No. 28/05, Articles 20,61.

the inspection control in relation to all planning documents, as well as the structures referred to in Article 91 of the aforementioned Law.

According to the **Law on Local Self-Governance**⁷⁰, the Communal Police ensures communal order in relation to parking, disposal of waste, water supply, sewage and atmospheric waters, maintenance of public hygiene, public lighting, maintaining markets, parks, greenery, traffic signs and signage, burials, local roads, noise, work hours, transport of passengers in the municipality and surroundings, taxi transport; it offers information services to citizens and performs other affairs within jurisdiction of the Municipality that are defined by law and enshrined in the decisions of the Parliament.

The **Decision on Communal Police**⁷¹ stipulates that the Communal Police performs supervision in the areas of:

- transportation and deposit of municipal and other waste;
- maintenance of streets, roads, squares and other public areas;
- use and maintenance of local roads.

The provision of communal order in the mentioned areas is performed by the municipal police officer and inspector for road traffic and local roads in accordance with the Act and by-laws in this area. Inspector for road traffic and local roads in the exercise of communal control, among other things, provides a communal order in the use and maintenance of local roads.⁷² Communal Police have the authority to issue a decision on removing the temporary facility that is set up or constructed without permission, or contrary to the provisions of the aforementioned Decision. The Communal Police has the same competencies if the building permits or the decision on location has expired.⁷³

According to the **Law on Police**⁷⁴, a police officer is authorized to warn the person who by its behavior, actions or failure to perform a certain action can jeopardize their own security or the security of other persons or property; or disrupt public order and peace; or endanger traffic safety on the roads; or when there are reasonable expectation that this person could motivate another person to commit a crime or offense.⁷⁵

In addition, the police officer can issue orders so as to eliminate the danger to life and personal security of citizens, prevent the execution of crimes, offenses, apprehend their perpetrators and to find and trace clues that can be used as evidence, maintain public order and peace or safety of road traffic.⁷⁶

⁷⁰ Official Gazette of Republic of Montenegro, No. 42/03

⁷¹ Official Gazette of Municipality of Kotor, No. 05/06

⁷² *Ibid.*, Article 3.

⁷³ *Ibid.*, Article 42.

⁷⁴ Official Gazette of Republic of Montenegro, No. 28/05

⁷⁵ Law on Police, Article 25.

⁷⁶ *Ibid.*, Article 26.

4.3 Remedy and compensation

The Environmental Protection Law defines remedy as a set of prescribed measures and activities that will re-establish or replace the condition of the environment that was there before the occurrence of damage or pollution of the environment.

As part of their rights and obligations, the environmental protection entities are obliged to ensure the control and prevention of all forms of pollution and environmental degradation, and their reduction to the minimum. These entities are also obliged to ensure the **remedy and rehabilitation of parts or segments of the environment whose quality has been undermined due to pollution and other forms of degradation**,⁷⁷ thereby providing a sustainable use of natural resources, which essential to sustainable development Environmental protection entities cooperate and enact mutual communication in accordance with special regulations.⁷⁸

In the section entitled 'Obligation of remedy programs and implementation of remedies', Article 48 of the Environmental Protection Law requires that the polluter must create a recovery program for the removal of the environmental damage caused by emission exceeding the limit values set in special regulations.

Agency for Environmental Protection establishes a deadline for implementing the remedy program and gives consent to the program, or refers to other relevant authorities if necessary. Activities and measures aimed at eliminating the damage made to environment, types of remedy programs, scope and methodology of remedy programs and other issues of importance to the implementation of the program are provided by the Ministry of Environmental Protection, in cooperation with other authorities in charge.

In carrying out inspection activities and enforcement of the aforementioned Law, the development, implementation and monitoring of performance of the remedy program is controlled separately. Water Act prescribes that a legal entity or a person who causes damage to the water facility, water soil, water regime, or worsen the situation of erosion on the erosive area, **shall, within the period specified by the authorized inspection, take action to re-establish the state that was there before the damage occurred**.⁷⁹ If they do not take action within the specified period, action will be taken by the authorized administrative body or authority of local government at the expense of those that caused the damage.

⁷⁷ Environmental Protection Law, Article 6.

⁷⁸ Minister of Transport, Maritime Affairs and Telecommunication Andrija Lompar told the daily newspaper *Dan* on the topic of remediation of Lipci the following: "What the Government has discussed is that, given that the determination of responsibility for the damage made is now in the court procedure, the responsible state body, were it any state authority, would have to make the recovery project and initiate remedies. While the trial is over and the responsibility determined, it is hardly that anyone will take over the responsibility for the remedy." 12 January 2009, *The guilty before the Court will remedy Lipci*, *Dan*.

⁷⁹ Water Act, Article 150.

The ‘Mitigation of harmful consequences on nature as results of actions, activities and services in a protected natural good’ section of Nature Protection Law stipulates that a legal entity or a person that caused adverse effects on protected natural good through implementation of projects, actions and activities is obliged to implement compensatory measures.⁸⁰

Compensatory measures are determined on grounds of the anticipated damage or damage actually inflicted upon nature. They include:

- the establishment of new sites that have the same or similar characteristics as the damaged site;
- the establishment of other significant sites for biodiversity and regional diversity, and protection of natural goods;
- financial reparation equal to the damage caused to the site, if it is not possible to implement compensatory measures or remediation.

Compensatory measures are determined by the administrative body. In determining the compensatory measure, the precedence is given to the establishment of a new site with the same or similar characteristics as the damaged site. If the measure taken is the one of financial reparation, then it is paid to the budget of Montenegro.⁸¹

Also, this law prescribes that, if the actions, activities and services related to the use of natural resources are carried out without the measures ensuring the protection of nature and if subsequently damages occur, the user of a protected natural resource is obliged to immediately and at his own expense, remove the harmful consequences of his actions.

4.4 Responsibilities of the Directorate of Transport towards the contractor

Directorate of Transport is the investor of the construction of Risan - Grahovo – Zabljak road. The company ‘Mehanizacija i Programat’ is contracted for the Lipci - Knežev Laz section of this road. The deadline for the completion of works was the end of June 2008, The total value of this development amounted to 12,097,156.51 euros. The subcontractor was the Nikšić-based company ‘Tani’.

Under the Law on Spatial Development and Construction of Structures, the investor is obliged to conduct appropriate surveillance of the soil and the building and its impact on the environment. The surveillance is conducted within a specified period, which depends on the characteristics of the object and the grounds. The results of this surveillance must be submitted to the authorized inspectors, along with a list of measures to be taken (if any).

The administration authority conducts inspection supervision in the area of spatial development, through urban planning inspectors and environmental protection inspectors.

⁸⁰ Nature Protection Law, Article 14.

⁸¹ *Ibid.*, Article 14.

5. The epilogue of Lipci case

Ranko Radulović, the owner of the company Tani has been charged with ‘**unlawful occupation of land**’ and ‘**destruction and damaging of protected natural goods**’. According to the Article 134 of the Criminal Code,⁸² the penalty for unlawful occupation of land is either financial or imprisonment up to one year. According to the Article 310 of the same law, the penalty for the destruction and damage to protected natural goods is imprisonment from three months to five years. The Court ruled a single penalty of four month imprisonment.⁸³

The head of the construction site Miloš Marković has been sentenced to a probationary sentence of three months for ‘**endangering the environment**’. For this crime, the Criminal Code provides a penalty of up to five years.⁸⁴

Rajko Radulović, the head of the planning service of JP Morsko Dobro, and Biljana Jončić, the water management inspection officer were sentenced to a probationary sentence of six months for the crime of ‘**unconscientiously acting in the performance of official duties**’. For this crime, the Criminal Code prescribes the penalty of imprisonment from six months to five years.⁸⁵

The weekly *Monitor* commented on the verdicts in the following way: *Judge Momirka Marović sentenced the main actor of Lipci affair, the businessman from Nikšić who has a substantial criminal record, Ranko Radulović, to a single sentence of four months imprisonment for unlawful occupation of more than six thousand square meters of coast and permanent devastation in UNESCO protected zone. This equals to a 28 minutes sentence per square meter. Two months that he spent in investigative detention were deducted from his four month penalty. By comparison, this summer, a policeman accused of taking 20 euros from a driver whose car registration had expired was sentenced to a year in prison.*⁸⁶

⁸² Official Gazette of Republic of Montenegro, No. 70/04

⁸³ At the trial in the Court of Kotor in May 2009, the head of the Kotor's Harbor Master's Office, Nikola Drakulović said that the accused ‘Ranko Radulović is not guilty for pouring the overage of rock material from Lipci – Knežev Laz route into the sea because that is often done’. In addition to that, he said that he is familiar to that from his long practice as a harbor captain.

⁸⁴ Criminal Code, Article 104.

⁸⁵ The Article 224. of Criminal Code provides a longer sentence, up to five years, in the case an official violates the law and other regulations and acts of general, failing to perform duties or acting unconscientiously in his service in any other way, although he was conscious that he could violate the rights of others, or cause damage to property by doing so, and than a serious violation of rights or damage to property actually happens.

⁸⁶ Komnenic. P, ‘A prize for devastator’, *Monitor*, No. 988, Podgorica

6. Conclusions

- **In carrying out their legal competencies, the inspection services proved irresponsible and non-professional.** This is particularly true of the Environmental Inspection, Water Management Inspection, State Construction Inspection, Roads Inspection and Municipal Inspection. Their incompetence and non-professionalism were apparent not only in terms of hastily declared lack of jurisdiction, but also in terms of non-applying the clear provisions of Law on Inspection Control that gives the inspector the right to sentencing and police assistance. The same applies to the **police** that allowed the works that were contrary to the law and were endangering the security of persons, especially participants in traffic, to continue for a long period of time. However, eventually the police turned out to be the only state authority willing and able to stop the illegal works.
- Given the scope and significance of the whole case, **political support for professional and responsible work of inspection services was largely non-existent**, both from the level of line Ministries and from the Government itself. The lack of will at the level of the Government and several Ministries to support the implementation of measures envisaged by laws and regulations that deal with competencies of the individual inspection services (particularly of the act regulating the exercise of joint inspection control) goes in favor of these claims. Specifically, the Government has not used the opportunity enshrined in the Regulation on joint inspection control, which concerns the formation of inspection teams.
- **Disciplinary and ethical responsibility of public officials in this case, to our knowledge, has not been assessed.** Thus the overall responsibility for the aforementioned case is transferred to the courts. This must not be the only form of determining and establishing criminal responsibility, either for this case or for the practice of inspection services and civil servants in general. On the other hand, an adequate system of attracting, retaining, training and remuneration of inspection officers has not been developed.
- **Relation of Ministers, heads of state agencies and inspectors towards the general public is at a very low level.** With the proverbial insensitivity to the public right to know, our findings indicate that the public is presented with fractions of information, information that lead to the wrong conclusions, or completely wrong information. Only a few Ministries and governmental bodies have appointed spokespersons, but these are often do not to fully present information retained by the Ministry, other body of state administration, or inspection services.
- **Media proved insensitive to this issue in the early stage**, although this case contained some ‘headline’ elements. At the later stage, media showed full commitment to the investigation of this issue, and to requests to sanction such instances through the work of relevant institutions.
- **The question of responsibility for the rehabilitation of devastated areas remained unresolved.** Additional confusion was caused by the statement of the Minister of Transport, Maritime Affairs and Telecommunications, who tied the rehabilitation works with determining criminal responsibility in this case. On the

contrary, the Water Act prescribes that the legal entity which causes damage to 'water land' including 'sea-shore' is obliged to restore it to its original condition, and if it fails to do so, a state institution will do so at the expense of the entity that caused damage. We believe that in this case the Directorate for Water was the responsible institution.

- Bearing in mind that the Nature Protection Law prescribes rehabilitation and **compensatory measures**⁸⁷ related to areas of exceptional quality, that belong to a protected natural goods according to the Law, jurisdiction and responsibility for establishing and monitoring of implementation of these measures is with the Ministry of Spatial Planning and Environment and the Agency for Environmental Protection. Doubtless, the Boka Bay area, which is on the UNESCO list of World Heritage Sites, is a protected natural resource.

- **Reports on the work of the inspections are inadequate** for monitoring and evaluation of the results and for the identification of problems in the work of inspection services. The reports are not published on the internet sites of Ministries, nor are they published on a monthly or a quarterly basis. In addition, press releases of inspection services are rare.

- There is no mechanism that would provide law enforcement in the event when one or more inspections proclaims that they have no jurisdiction over a certain case. Thus, the citizen (or other entity) that is reporting a case is left to find the right address or the competent authority of state administration and local self-government on their own. Such a legal framework and practice discourages citizens from reporting illegal acts, cooperating with state authorities to protect the public interest, and contributing to the rule of law.

- Implementation of the competencies of inspection services in terms of cooperation with the police, are not adequately applied.

- Reporting to the public on the work of inspection is at an unsatisfactory level; the structure of the report is inadequate and does not provide enough information about the results, problems and needs of inspection services.

- Joint inspection control is inadequately defined as is the reporting on this form of control.

Research has shown that the Office of the Chief State Prosecutor does not want to grant access to public documents, which it created and which it possesses.

The answer that Institute Alternative received from Basic State Prosecutor in Kotor concerning the request for text of the indictment according to the Law on Free Access to Information proves the aforementioned. The Prosecutor's Office, referring to the Law on Criminal Procedure, replied that 'there was no legal basis for the submitting indictment to third parties'.

⁸⁷ Nature Protection Law, Articles 14 and 15

7. Recommendations

Competencies of inspection services must be clearly specified, derived, and must not overlap. An analysis of the competencies of all inspections should immediately be prepared. It should serve as basis for preparing amendments to the laws that regulate the inspection control, so that the inspections would be able to fully carry out their competencies. Rather than overlapping, these competencies should be made complementary.

An administrative and a regulatory guillotine must be urgently undertaken in Montenegro. The implementation of this procedure could be conducted through a set of simple questions such as: *Is a certain regulation needed, is it in accordance with the law, is it convenient for operation, is it in accordance with the regulations of the WTO, is it in line with the EU standards.* In this way, the legal system would be freed from unnecessary regulations.

The fight against corruption in the inspection services should be a priority in the overall fight against corruption in state institutions. In this sense, the next action plan for the implementation of the program for the fight against corruption and organized crime should be revised or supplemented by a set of measures that will establish a stronger system of accountability and transparency in the work of inspection services.

A system of attracting, retaining, training, and rewarding inspection service officials should be developed, so that staff performing inspection tasks becomes competent, professional, properly motivated and responsible

The provisions of the Law on Civil Servants and State Employees concerning disciplinary liability should be consistently implemented. The Code of Ethics for Civil Servants and State Employees should be monitored through the establishment of precise mechanisms that determine accountability.

In order to effectively decide about the competencies of individual inspections, a sustainable mechanism should be established. Ministry of Internal Affairs and Public Administration should play a particularly important role in this respect.

A telephone service should be established in order to ensure that the citizens are supported, in relation to their views regarding the inspection authorities. Raising the awareness of the inspection services and of citizens about the possibilities of communication and cooperation, and increasing amount of information about the work of inspection, can be a significant contribution to the overall application of the law.

A mechanism for efficient distribution and exchange of information between the inspection services should be established. A coordinating body at the level of the chief inspectors may favor higher quality of cooperation and efficiency. This body would be charged with information exchange and planning of the joint activities on a weekly level.

In critical areas, early warning teams should be established, including representatives of inspection services, police, local NGOs and the media. In this way, a mechanism would be established for the exchange of information. It would enable timely response to incidents, occurrences, and processes that might affect the application of laws.

Sources of information:

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Monitor, no. 988, Komnenić. P, “Devastator gets rewarded”

A letter of NGO MANS and EXPEDITIO to UNESCO, 13 August 2008

Institute Alternative

Institute Alternative was founded in September 2007. Founders are prominent individuals with civil society, public administration and business sector background.

Mission of Institute is to strengthen democratic processes in Montenegro by identifying and analyzing policy options.

IA Strategic objectives are to increase quality of public policy development, to contribute to human rights protection in Montenegro, to contribute to development of democracy and rule of law.

The values we share are commitment, independence, learning, networking, team work.

Institute has implemented project “Public administration in Montenegro- salary schemes, rewarding mechanisms and opportunities for professional advancement in legislation and practice (January 2008 – June 2008)”.

Institute prepared short information with recommendations on Parliament of Montenegro - Transparency of financial activities (June 2008). Institute prepares and distributes on daily bases to over 200 recipients in Montenegro and worldwide “Daily Brief” containing political, social, economic, regional issues, with weekly commentaries. Institute was coeditor/co publisher of the Publication “Political criteria for EU Accession”. Representative of IA participated in session of the Parliamentary Committee for budget and finances where IA opinion on procedural and substantial budgetary issues was presented (December 2008).

IA implements, in cooperation with Center for Monitoring CEMI and European Movement in Montenegro, project “EU Matrix – Monitoring European integration process – Monitoring implementation of National Program for Integration of Montenegro into EU – preparatory phase”

Research report on Public Companies in Montenegro is in drafting process. (IA voluntary activity) Foundation Friedrich Ebert financed three IA research reports on Lipci case, case of First Bank as well as on parliamentary oversight of security services.

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