

Regulating water bodies or illegal business?

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Summary

The extraction of sand, gravel and stone from riverbeds and banks of watercourses, lakes and reservoirs is a measure aimed at arranging and maintaining surface waters. The Law on Waters generally bans the extraction of sand, gravel, sand and stone from the beds and banks of the surface water bodies, because this activity worsens the existing water regime, affects the groundwater level, causes erosion, limits or impedes the water use, disturbs the coastal stability, destroys the coastal belt and the natural balance of coastal ecosystems, degrades nature and the landscape and may lead to overflows. However, as an exception, extraction is possible as a measure of regulation and maintenance of water bodies and protection of the erosive areas, on the basis of a permit or in accordance with the conditions in that permit.

When the basic conditions for precise arrangement and maintenance of water bodies are not provided, a climate is created in which the motive for extraction of these mineral resources is of purely lucrative nature and is not carried out for achieving public interest which is protection of water from harmful effects. In this way, instead of regulating surface water bodies, the excavation of material becomes an illegal business for commercial purposes.

For the Ministry of Environment and Physical Planning

- Adopt by laws for implementation of the provisions for protection from harmful effects on waters and for arranging the riverbeds and banks of the surface waters;
- Adopt a plan for protection and defence against floods for areas that are not under jurisdiction of municipalities and other entities in accordance with the law and to determine the criteria and priorities for extraction of sand, gravel and stone from surface water bodies;
- Review the procedure, criteria and conditions for issuing a permit for extraction of sand, gravel and stone from the river beds and banks of surface water bodies and for granting the use of excess material (to set a requirement for updated technical documentation, introduce site inspection before and after the issuance of the permit);
- Improve the system for collection and transfer of data and information related to extraction of sand, gravel and stone;
- To enable access to data from the system and strengthen the inspection supervision for implementation of the legal requirements;
- Enable access to system data for the public;
- Create system for public complaints on illegal practices and properly deal with them.

For the Macedonian Government

- Reconsider the legal solutions and the respective competencies included in them (is it appropriate and why is the arrangement of surface water bodies in the hands of an entity established as a company for lucrative purposes);
- Determine the real and local competence and to eliminate the overlaps of competencies related to regulation of surface waters;
- Determine by law which legal entities can extract sand, gravel and stone;
- Legally regulate the conditions, the manner and the procedure for deviation of the use and sale of the extracted material and to establish control mechanisms;
- Submit a proposal for incrimination of the illegal practices of extraction of sand, gravel and stone from riverbeds and banks of surface waters;
- Adopt river basin management plans and a program for protection against harmful effects on water, ensure their implementation and introduce control mechanisms.

The topic of illegal excavation of sand, gravel and stone and abuse of the sediment material has been high on the agenda for a long time. A report on the Vardar basin issued by the State Audit Office indicates the destruction of riverbeds of the river Vardar and its tributaries - in the area of Tetovo, which includes Zhelino, the village of Sirichino, Crna Reka (Rosoman, the villages of Manastirec, Trstenik, Sirkovo), the river Bregalnica in Karbinci near Shtip and on the river Pchinja in Gorno Konjari. The illegal exploitation supports the erosive processes and leads to floods, thus endangering the health and property of the population. The State Inspectorate for Water Economy has on many occasions identified illegal exploitation of sand, gravel and stone, contrary to the permit or without any permit. On several occasions, cases of concession activity for exploitation of mineral resources in the coastal zones were also found, again contrary to the law. There are also cases in which the Inspectorate is prevented from having insight into the extraction of sand, gravel and stone. This indicates that there are illegal practices in the implementation of the policy for regulation of surface water bodies.

Weaknesses of the system that allow for manipulation and uncontrolled extraction of sand, gravel and stone

The relevant bodies that have a key role in implementing the policy for regulation of surface water bodies are the Ministry of Environment and Physical Planning (Sector for Water at the Directorate for Environment and the State Inspectorate for Environment). The local self-government units have the authority to regulate and maintain the waters in the urban areas. The Vodostopanstvo public utility is also vested with significant legal mandate in terms of arrangement of the surface water bodies in the respective area of operation.

The Ministry issues a permit for extraction of sand, gravel and stone from riverbeds and banks of watercourses. The permit determines the location, quantity, manner, time, objects and means for extraction, the loading and transport of sand, gravel and stone, and all of that should be recorded in the Water Ledger (information system). The permit can be issued only in accordance with the planning document, which is the River Basin Management Plan. It includes a program for protection from harmful effects on water, which envisages regulation and arrangement of watercourses as a preventive measure for protection from harmful effects, as well as an operational plan for protection and defense against floods. The Vodostopanstvo utility company has not adopted an operational program for the area in which it operates, and only a small number of municipalities have adopted such operational plan. These documents have not been adopted for any of the four areas of the river basin on the territory of the country.

Furthermore, important for issuing the permits for extraction of sand, gravel and stone is the implementation of the legal obligations of the Ministry of Environment and Physical Planning, the Ministry of Agriculture, Forestry and Water Economy, the municipalities and the Vodostopanstvo public utility in order to determine the boundaries of the erosive areas and areas threatened by erosion, including measures for protection from erosion and regulation of torrents. There are no acts with which this legal requirement is met.

The regulation and maintenance of surface water by extraction of sand, gravel and stone is logical only if the entity in charge of regulation in accordance with the law has previously adopted a program for protection from harmful effects on water, including operational plan for protection and defense against floods. With these documents, the entity in charge of surface water regulation should determine the erosive areas, the areas endangered by erosion and their boundaries. In addition, the extraction



of sand, gravel and stone from surface waters should be determined as a measure for protection from harmful effects, erosion and regulation of torrents in the program and the operational plan. These legal obligations are not met, so the issuance of permits is not in accordance with the law and leads to conclusion that the basis for determining the locations where sand, gravel and stone should be extracted from surface waters is not planned and is not intended to achieve the goals of regulation and maintenance of riverbeds.

In the procedures for obtaining permits, it is mandatory to submit technical documentation (basic design, project revision and geodetic report), which is prepared by a legal entity registered for such activity on behalf of the applicant submitting request for such permit. There is no expiry date for validity of the technical documentation so there is a possibility that the documentation submitted does not correspond to the factual situation in the field.

The absence of all the above documents brings into question the existence of reasons and criteria in the selection of locations for extraction of sand, gravel and stone and, consequently, the basis on which the permits have been issued so far, as well as whether their issuance aims to improve the water regime and protection from harmful effects; or it is a matter of extracting the deposited material for commercial purposes. In the area of the Vardar river basin, which covers more than 80 percent of the water resources available on the territory of RN Macedonia, 66 permits/ water management consents were issued by 2017.

Making a profit by selling sand, gravel and stone – contrary to the public interest

According to the Law on Waters, if the permit allows for removal of part of the material from the riverbeds and shores, the permit holder may place those on the market

with proper consignment notes issued and certified by the administrative body responsible for environmental affairs. In reality, the absence of consignment notes registered and issued by the Ministry is evident, so there are often manipulations in terms of quantity of the sediment material that was taken out.

There are no provisions in the Law or restrictions on the conditions, manner and procedure for sale of the extracted material, so they are left to be determined by the licensee. The Vodostopanstvo water utility uses a public bidding procedure in order to select a bidder/ buyer who can take the extracted material from the depot, but also to extract it with his own machinery. In practice, there are cases when the bidder does not have his own machinery so he concludes an agreement with other entities to use their machinery and sell the alluvial material at a price higher than the one he offers to Vodostopanstvo water utility thus generating income higher than that of the licensee, which is the actual motive for extracting sand, gravel and stone.

In the absence of control mechanisms and criteria, these provisions and practices lead to systematic legalization of the extraction of sand, gravel and stone from surface waters for commercial purposes and their exploitation as a mineral resource. The field inspections for preparation of the State Audit Office report in 2019, it was determined that, with the exception of permits/ consents where municipality is the holder, in all other cases, when extracting material from the riverbeds and river banks, the main emphasis is on its sale, rather than on regulation and arrangement of rivers. Certain contracts for extraction of sand, gravel and stone reach a value of over 50 thousand euros, and the provisions of the agreements concluded with legal entities do not include provisions on the manner and activities to be taken to regulate or improve the watercourse regime, but only for the amount of material that is extracted and sold, regardless of whether it is a surplus material according to the permit from the Ministry. Sand, gravel

and stone are extracted until the quantity provided by the permit is reached, regardless whether the regulatory objective has been achieved in the meantime. No one in the field controls how the „arrangement“ of the riverbeds and the shores is carried out. Most of the extracted material is used for sale, while a minimal part is used for arranging riverbeds. The audit report expresses suspicion that the technical documentation is prepared by the person who later submits a bid in the public bidding procedure, and usually as the sole bidder, and who later gets the job and is a transaction party known in advance.

The indicative budget that should lead to effectiveness of the policy for arranging and maintaining riverbeds and banks of surface water and to overcoming the situation, is estimated at 42,300 euros, intended to create basic conditions for accurate planning of the need to arrange the riverbeds and banks of surface waters, determination of the entities that can do the regulation, establishing records and regulating the manner of selling the excess extracted material, as well as ensuring competitiveness and transparency of the process.

References

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- State Audit Office (2019). Final report of the performance audit: Effectiveness of policies, measures and activities in exploitation of gravel and stone from the Vardar river basin, Skopje.



Please read more on this topic in the policy paper

„Challenges of water resource management: How to use and protect water“.