

# 1. NATIONAL COMMISSION FOR THE IMPLEMENTATION OF THE ACTION PLAN

"There are doubts in the independence of the National Commission, representatives of the NGOs encountered difficulties, especially with regard to access to information."

*Montenegro 2007 Progress Report  
European Commission, 06 11 2007*

"Ensure an efficient monitoring for the implementation of the anti-corruption program through a specialized independent anti-corruption body with sufficient resources."

*Council of Europe's GRECO Evaluation Report on Montenegro (GRECO), October 2006*

## 1. NATIONAL COMMISSION FOR THE IMPLEMENTATION OF THE ACTION PLAN

This section documents how at the very basic level even the structure of appointees to the National Commission is in violation of the principle of incompatibility of public functions prescribed by the Constitution and the Law on Conflict of Interest.

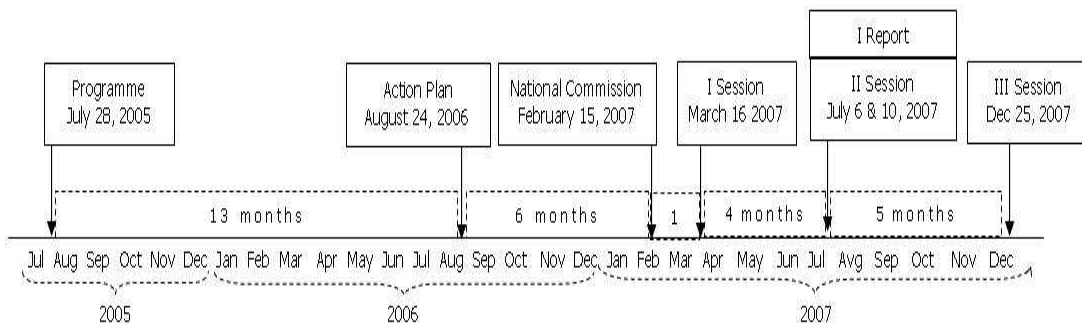
It describes how the Commission has violated a number of provisions from the Rules and Procedures regarding the public character of its work and for convening of sessions, therefore reducing the ability of any conscientious Commission member to properly carry out their function in accordance with the Rules and Procedures.

The final section documents the manner in which a member of the National Commission, as the highest instance for fight against corruption and organized crime in the state, has been denied access to information on the state of organized crime in Montenegro, although the Commission members have the right to that material, according to the Government decision and the Rules and Procedures on the Work of the Commission.

The process of establishing a body to oversee and implement the fight against corruption and organized crime, required almost two years. The Program of Fight against Corruption and Organized Crime was adopted at the Government session held on 28 July 2005, and a year later, on 24 August 2006 the Government adopted an Action Plan for the Implementation of that Program.

The Action Plan envisaged the establishment of the National commission for monitoring of its implementation immediately after the adoption of that document, but the National Commission for the implementation of the Action Plan for carrying out the Program of Fight against Corruption and Organized Crime was finally formed only a year after the adoption of the Action Plan, on February 15 2007.

The graph below shows the adoption dynamics of the Program and the Action Plan which define at the strategic and the operative level the obligations of all the state institutions in the area of fight against corruption and organized crime, recognized as the key prerequisite for the European integrations process. The graph also shows the time framework within which the National Commission was established and the intensity of its work until the end of 2007.



*Graph 1: Adoption dynamics of the Program, the Action Plan and the work of the National Commission*

## 1.1. Members of the National Commission

According to the Government decision<sup>1</sup>, the National Commission is made up of the President, Vice President and nine members. Task of the Commission is to ensure that the competent bodies adequately implement the Action Plan, to manage the funds provided for its realization, monitor and assess the success of implemented measures and submit to the Government semi-annual reports.

*"A substantial concern is that the members of the Commission who are representing the government, the Supreme Court and the Prosecutor General's Office are, de facto, being asked to assess and, if necessary, to criticize the work of their respective ministries and institutions, which carries the risk of undermining the credibility of the entire exercise."*

*Corruption in Montenegro 2007: Review of the Main Problems and the Status of Reforms  
Chr. Michelsen Institute, September 2007<sup>2</sup>*

However, most members of the Commission hold functions as the head of institutions and ministries who are expected to perform key tasks in the Action plan, and who as members of the Commission find themselves supervising the success, or otherwise, of their own results.

For example, the President of the Commission is the Deputy Prime Minister for European Integrations, Vice-President of the Commission is the Minister of Internal Affairs and Public Administration, and the Commission members are the Minister of Finances and Justice, whose ministries are in charge of the realization of a number of measures envisaged by the Action Plan.

Also, the President of the Supreme Court<sup>3</sup> and the Supreme State Prosecutor are Commission members and they report to themselves on special chapters of the Action Plan refer to reforms to be carried out in the judiciary and the prosecutor's office.

The largest number of activities envisaged by the Action Plan refers to the Police Directorate, whose director is also a member of the National Commission, thus being in a position to supervise his own work. Another member of the Commission is the Director of the Directorate for Anti-corruption Initiative which, apart from the measures from the Action Plan, is responsible for secretarial support to the National Commission in processing and preparation of a report of the competent bodies.

Among the members are also MPs who are presidents of the Parliament Committees for Economics, Finances and Budget and for the Political system, Judiciary and Administration.

The sole representative of the non-government sector who is nominated for a Commission member is the Executive Directors of MANS.

The Secretary of the Commission is the Head of the Department for Prevention of Economic Crime in the Police Directorate.

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<sup>1</sup> The Government Decision on the Establishment of the National Commission dated February 15 2007

<sup>2</sup> The report was developed at the request of the Swedish International Development Agency (SIDA),

<sup>3</sup> President of the Supreme Court, Ratko Vukotić has retired in the meantime, so that the new President is Vesna Medenica who previously performed the function of the Supreme State Prosecutor.

Excerpt from the Government Decision on the Establishment of the National Commission for the implementation of the Action Plan for carrying out the Program of Fight against Corruption and Organized Crime, adopted on 15 February 2007.

II The following are nominated for the National Commission:

President prof. dr GORDANA ĐUROVIĆ, Deputy Prime Minister of the Republic of Montenegro  
Vice President JUSUF KALAMPEROVIĆ, Minister of Internal Affairs and Public Administration  
members:

IGOR LUKŠIĆ, Minister of Finances

MIRAŠ RADOVIĆ, Minister of Justice,

DRAGIŠA PEŠIĆ, President of the Parliament Committee for Economics, Finances and Budget,

DŽAVID ŠABOVIĆ, President of the Parliament Committee for the Political System, Judiciary and Administration,

RATKO VUKOTIĆ, President of the Supreme Court of the Republic of Montenegro,

VESNA MEDENICA, Supreme State Prosecutor,

VESELIN VELJOVIĆ, Director of the Police Directorate,

VESNA RATKOVIĆ, Director of the Direction for Anti-corruption Initiative,

VANJA ČALOVIĆ, Executive Director of the Network for the Affirmation of Non-government Sector,

secretary PETKO SPASOJEVIĆ, Head of the Department for Prevention of Economic Crime in the Police Directorate.

III The tasks of the National Commission are to:

- Manage, organize and synchronize the public administration bodies activities, activities of state bodies and other institutions competent for the implementation of the Program against Corruption and Organized Crime;
- Manage the overall funds provided for the realization of the Program against Corruption and Organized Crime;
- Determine priorities, dynamics and time limits for realization and assess the results achieved in the implementation of the Program against Corruption and Organized Crime;
- Submit to the Government of Montenegro a report with the review of the state, assessment and proposal of measures at least twice a year.

IV With the aim of more efficient carrying out of its activities, the National Commission can form permanent or temporary expert teams and engage experts from the area of fight against crime and human rights protection.

V The National Commission can require expert assistance from relevant international organizations and institutions which have projects related to prevention of corruption and organized crime.

VI The National Commission can request data, explanations and reports from the state bodies and other organizations related to the issues regarding the prevention and fight against organized crime.

## Case study 1: Conflict of Interest of the National Commission members

**This case study describes how at the very basic level even the structure of appointees to the National Commission is in violation of the principle of incompatibility of public functions prescribed by the Constitution and the Law on Conflict of Interest.**

**Through a two step process, MANS has tried to prove first that membership in the Commission is a public function. Since all the members of the Commission are appointed in the same way, and only legal criteria for defining public functions is the manner of appointment, MANS went on to test whether members of the Government, judges and prosecutors should be prohibited from performing the function of members of the Commission as it would represent a clear conflict of interest.**

The Constitution of Montenegro prescribes the incompatibility of functions of the Government members, justices and prosecutors and other public functions, while the Law on Conflict of Interest is the only regulation defining what a public function is – one becomes a public official through nomination by the Government, the Parliament or the local self-government.

MANS, using themselves as a legal test case, submitted a number of initiatives to the Commission for Determining Conflict of Interest in order to prove that membership in the National Commission is a public function. The Commission for Conflict of Interest determined that membership of MANS representative on the Commission was indeed a public function, as members of the National Commission are nominated by a Government decision.

In the second step, MANS have submitted initiatives related to the incompatibility of functions of Government members, judges and prosecutors with other public functions, in particularly membership in the National Commission.

However, where Government members are concerned, the Commission for Conflict of Interest<sup>4</sup> made contradictory decisions on several occasions<sup>5</sup> and the Commission assessed that for members of the Government, judges and prosecutors, membership in the National Commission was not a public function<sup>6</sup>.

Interestingly, after a number of initiatives submitted by MANS, one member of the Commission for Conflict of Interest, gave a dissenting opinion stating ***"the opinion of the Commission that membership in the National Commission for Vanja Čalović is a public function and for other members it is not a public function is untenable so the Commission should reconsider its position."***<sup>7</sup>

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<sup>4</sup> MANS has been monitoring the implementation of the Law on Conflict of Interest since 2004, and more detailed information on the work of the Commission for Conflict of Interest is available in a special publication at [www.mans.cg.yu/korupcija/konflikt\\_interesa.htm](http://www.mans.cg.yu/korupcija/konflikt_interesa.htm)

<sup>5</sup> The most famous is the case of the Council for Privatization whose members are nominated by the Government, where the Commission after several initiatives of MANS determined that membership in the Council is a public function, and immediately after that that it is not a public function, for the Government members who are at the same time members of the Council.

<sup>6</sup> Chronology of decisions of the Commission for Conflict of Interest is given in Annex 1

<sup>7</sup> Željka Vuksanović, member of the Commission for Conflict of Interest, Decision of the Commission dated 27 April 2007

## **1.2. Conflict of Interest in Monitoring Procedures**

The Action Plan envisages that the Directorate for Anticorruption Initiative provides support to the Commission in the monitoring of that document implementation, but the Directorate stated it did not have the necessary capacities.

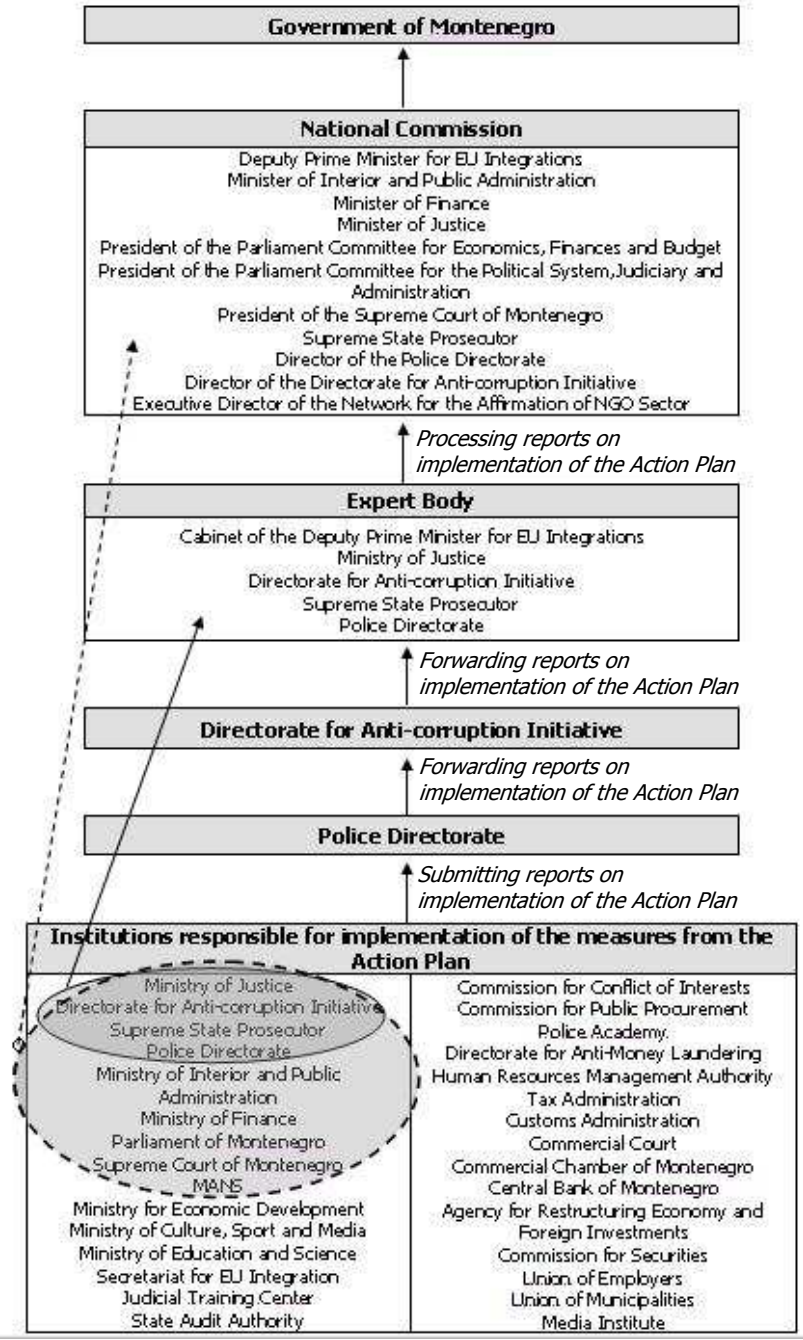
Therefore, the reports are sent to the Police Directorate, which then submits them to the Directorate for Anticorruption initiative which processes them with the expert team and prepares the draft reports on the implementation of the Action Plan for the Commission sessions.

The Government decision on the establishment of the Commission stated that in view of more efficient performance of its activities, it can form permanent or temporary expert teams.

However, in the period between the first and the second session, without consultations with the Commission members the Commission President, formed the so called "expert body", with the explanation that the Directorate for Anticorruption Initiative did not have the capacities to process all the information obtained.

The expert body which processes reports on the implementation of the Action Plan submitted by all the institutions, is made up of five institutions which themselves submit reports on their work, and the heads of which are at the same time members of the National Commission: the Police Directorate, the Directorate for Anticorruption Initiative, the Ministry of Justice, the Supreme State Prosecutor and the Cabinet of the Deputy Prime Minister for European Integrations.

The scheme of the monitoring process for the implementation of the Action Plan is given in the graph below.



Graph 3: Scheme of the monitoring process of the Action Plan implementation

### 1.3. Rules on the Work of the National Commission

**This section describes how the Commission has violated a number of provisions from the Rules and Procedures regarding the public character of work and for convening of sessions, therefore reducing the ability of any conscientious Commission member to properly carry out their function in accordance with the Rules and Procedures.**

The Constitutive Session of the National Commission was held on 16 March 2007 and the Rules and Procedures on Work and the proposal of the form for monthly reporting of institutions in charge of implementation of the measures from the Action Plan were adopted at it. The Rules and Procedures defines in more detail the rights and obligations of the Commission members, the convening and the work of the session and the public character of the Commission work<sup>8</sup>.

#### **Public character of work**

**Rules and Procedures:** The Commission Sessions are, as a rule, held without the presence of the public, and the public character of work is provided by a public presentation of half-yearly and other reports on work, press release after each sessions and press conferences, as well as through enabling of insight into the documents on the work of the Commission, in compliance with special provisions. All the documents related to the work of the Commission, which are not defined as secret, will be published on the website of the Government.

**Practice:** None of the Commission sessions was open for public. After each session the President of the Commission organized press conferences including the one where First report of the Commission was released. Only a small number of documents on the work of the Commission are published on the website of the Directorate for Anti-Corruption Initiative<sup>9</sup>. No minutes from the Commission meetings have been published on the web site, nor any of the reports on the realization of measures from the Action Plan submitted by the competent state institutions.

#### **Procedure**

**Rules and Procedures:** The President, or the Vice President sends to the Commission members the invitation for the meeting, with a proposal of the agenda and the support material, as well as the minutes from the previous meeting, at latest eight days before the session is held. On an exceptional basis, the President or deputy can convene a Commission meeting upon a proposal of a member of the Commission, with notice of less than eight days, and the agenda with the appropriate materials can be proposed at the session itself.

**Practice:** Invitation for the 2<sup>nd</sup> meeting of the Commission and the material, Draft of the first report on the implementation of the Action Plan, a 90 page document, was sent to the Commission members on Monday, 2 July, and the session was scheduled four working days later, for Friday, 6 July 2007.

#### **Convening of sessions**

**Rules and Procedures:** The session is convened at least 4 times a year

**Practice:** 3 sessions of the Commission have been held, on 16. 03., 6 06. and 25.12. 2007.

#### **Budget**

**The Government decision on the establishment of the National Commission:** The task of the Commission is to manage the overall funds provided for the realization of the Program.

**Practice:** The Commission has no budget at its disposal.

<sup>8</sup> Text of the Rules and Procedures on the Work of the National Commission is given in Annex 2

<sup>9</sup> The list of the competent state bodies and NGOs, the First Report on the realization of measures from the Action Plan, the Rules and Procedures on the work of the Commission, Decision on the Establishment of the Commission, Monitoring Form, the Action Plan and the Program of Fight against Corruption and Organized Crime.



## **Case study 2: Access to information by the members of the National Commission**

**This case study documents the manner in which a member of the National Commission, as the highest instance for fight against corruption and organized crime in the state, has been denied access to information on the state of organized crime in Montenegro, although the Commission members have the right to that material, according to the Government decision and the Rules and Procedures on the Work of the Commission.**

The Rules and Procedures prescribes that information on the work of the state bodies, related to the scope of work of the Commission, can be required by the Commission members over the President of the Commission.

**Again, using itself at a legal test case, the MANS representative on the Commission requested information critical to their work as a conscientious Commission member. MANS officially requested key documents describing state of organized crime in the country, and developed by the Agency for National Security and the Police Directorate from the President of the Commission.**

The President in a written response, first claimed that she did not possess reports on the state of organized crime and referred the MANS representative on the Commission to the Agency for National Security and the Police Directorate, as institutions that developed those reports.

On the basis of the second request from the MANS representative on the Commission, those institutions then referred the member back to the President of the Commission and pointed out that information could be requested only through , and that the reports were strictly confidential.

During this period, one of the reports was published by the media and the MANS representative wrote to the President again, requesting said information. For a second time, the President of the Commission refused to provide information to the Commission member with the explanation that the reports were secret and that they did not belong to documents related to the scope of work of the National Commission.

In addition, the Director of the Police Directorate who is also a member of the Commission, stated that the reports on the state of organized crime were not important for the work of the Commission.

**As can clearly be seen from the extracts of the Rules and Procedures of the Commission's work, the actions taken above have denied rights to a Commission member, preventing them from fulfilling their obligations.**

The Government Decision on the establishment of the Commission prescribes that the National Commission can request data, explanations and reports from the state bodies and other organizations referring to prevention and fight against organized crime<sup>10</sup>.

The Rules and Procedures prescribes that a Commission member has the right to be regularly informed on all the issues the National Commission considers and makes decisions on, as well as on all the other issues important for his participation in the work of the National Commission. The Rules and Procedures provides that all the members of the Commission can require the competent bodies to submit data and information, as well as to have insight into acts and documents related to the scope of work of the National Commission, over the President of the National Commission<sup>11</sup>.

A member of the National Commission is obliged, according to the Rules and Procedures, to perform conscientiously the jobs he has been nominated for, and the National Commission is obliged to keep a state, official, business or some other secret within its work<sup>12</sup>.

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<sup>10</sup> Government Decision on the establishment of the National Commission, Article VI

In the capacity of the National Commission member, on 19 June 2007 Vanja Čalović asked from the Commission President for the reports on organized crime which the Director of the Agency for National Security and the Director of the Police Directorate presented to the Committee for Safety of the Parliament of Montenegro.

Poštovana gospodice Čalović,

Većano za predmetni dopis obavještavam vas da kao Predsjednik Nacionalne komisije za implementaciju Akcionog plana za sprovođenje Programa borbe protiv korupcije i organizovanog kriminala, shodno Poslovniku o radu Komisije ne posjedujem dokumentaciju Agencije za nacionalnu bezbjednost i Uprave policije, koja je prezentovana na Odboru za bezbjednost Skupštine RCG.

Kao što Vam je poznato, članom 7 stav 2 Poslovnika o radu Nacionalne komisije utvrđeno je da član Nacionalne komisije može od nadležnog organa tražiti dostavu podataka i informacija, što upućuje na nadležnost Agencije za nacionalnu bezbjednost i Upravu policije.

*As you know, Article 7 paragraph 2 of the Rulebook on the Work of the National Commission stipulates that a "National Commission member can ask from a competent body to submit data and information ...", which points to the competence of the Agency for National Security and Police Directorate*

Potpredsjednik Vlade RCG  
za evropske integracije  
Prof. dr Gordana Đurđević



Dr. G-din Rado Šperozović, Sekretar Nacionalne komisije

*Official letter of the President of the National Commission, 21 June 2007*

**By the order of the President of the National Commission**, Vanja Čalović asked on 22 June the mentioned documents to be submitted by the Director of the Police Directorate and the Agency for National Security.

Excerpt from the official letter to the Directors of the Police Directorate and the Agency for Prevention of Money Laundering dated 22 June 2007.

„Hereby I am asking you pursuant to Article 7 paragraph 2 and in relation to Article 7 paragraph 1 Article 8 paragraph 1 and Article 9 paragraph 1 of the Rules and Procedures on the Work of the National Commission for Implementation of the Action Plan for carrying out the Program of Fight against Corruption and Organized Crime, and **in compliance with the act of the Deputy Prime Minister for Economic Integrations** no. 10-4963 dated 21. June 2007 which I am enclosing, to make possible insight into documents you presented to the Committee for Safety of the Parliament of RoM, and which refer to the state of organized crime in Montenegro.“

<sup>11</sup> Rules and Procedures on the Work of the National Commission, Article 7, paragraphs 2 and 3

<sup>12</sup> Rules and Procedures on the Work of the National Commission, Article 7, paragraph 1 and Article 9, paragraph 1

Broj: 250-02-1308-2/04  
Podgorica, 05. 7. 2007

NVO - M A N S  
BROJ: 2350/07  
PODGORICA, 05. 07. 2007

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA  
- gospođica, Vanja Čalović -

PODGORICA  
Dalmatinska 188

PREDMET: Odgovor na zahtjev

*If the National Commission for implementation of the Action Plan for carrying out the Program of Fight against Corruption and Organized Crime has the necessity to ask for particular data and explanations from the Agency for National Security, it should do so through the Commission President, pursuant to Article 7 paragraph 2 of the Rulebook on Work.*

S poštovanjem,

  
DIREKTOR  
DUSKO MIKŠKević

*Letter of the Director of the Agency for National Security, 5 July 2007*



REPUBLICA CRNA GORA  
VLADA REPUBLIKE CRNE GORE  
UPRAVA POLICIJE  
01 Broj: 654/04 - H187  
Podgorica, 03. 07. 2006. godine

NVO - M A N S  
BROJ: 2360/10  
PODGORICA, 03. 07. 2007

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA  
- Izvršni direktor, g-djica Vanja Čalović -  
- Stari Aerodrom, zgrada «Čelebić» -

PODGORICA

Uvažena,

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*Namely, information presented at the Committee for Security and Defense of the Parliament of RoM, and which refers to organized crime is strictly confidential material with particular data and knowledge, which is in the phase of further operative research and deepening.*

S poštovanjem,

  
DIREKTOR  
Veselin Veljović

*Official letter of the Police Directorate Director dated 3 July 2007*

**Director of the Agency for National Security** in his response states "I point out that this, as well as other reports which the Agency submits to the Parliament Committee are exclusively in the function of realization of the parliamentary control of work of the Agency for National Security".

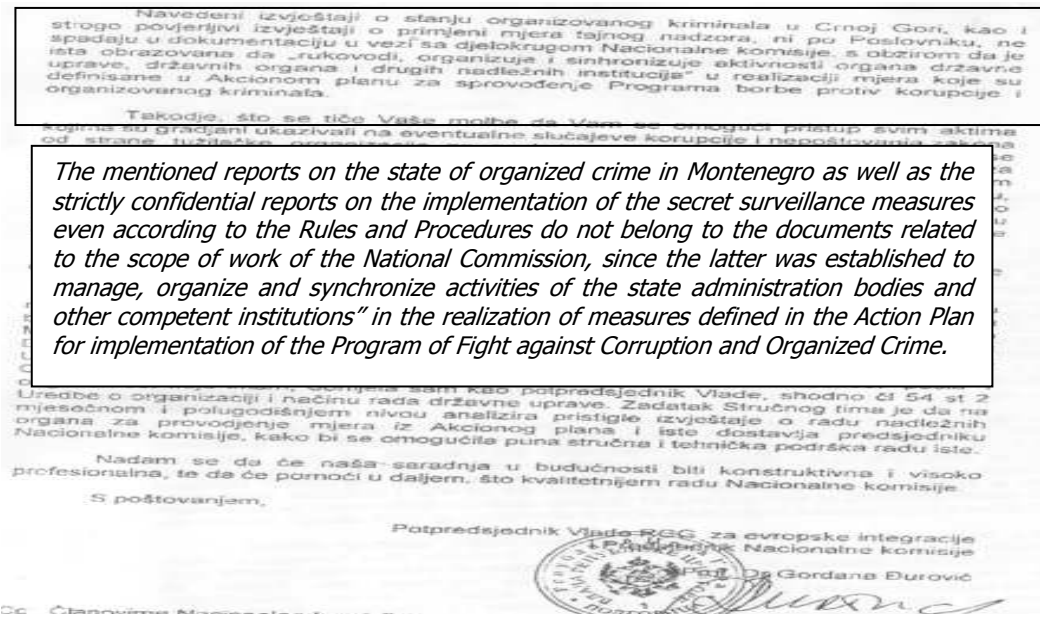
In the Agency they quote Article 7 paragraph 2 of the Rules and Procedures on the Work of the National Commission and point out that "**A Commission member who needs to ask for particular data and explanations of the Agency should do so through the Commission President**".

Director of the Police Directorate, who is at the same time a member of the National Commission states that the requested information is "**strictly confidential material** with particular data and knowledge, which is in the phase of further operative research and deepening".

According to that interpretation, he can access data on the state of organized crime, only in the capacity of the Police Directorate Director, but not also as a member of the National Commission, as the highest instance in the state, which also follows the work of the Police Directorate in the area of fight against organized crime.

In the meantime, on 15 July 2007, **the daily „Vijesti“ published information from the report of the Agency for National Security.**

After the publishing of the report in the media, on 31 July Vanja Čalović asked again **from the Commission President** for the same documents. The Commission President states she **did not possess the reports** on the state of organized crime, and that these are **strictly confidential documents** which according to the Rules and Procedures do not belong to documents related to the scope of work of the Commission.



*Official letter of the President of the National Commission dated 7 August 2007*

On the same day, 7 August 2007 the session of the National commission was held at which access to documents relevant for the work of the National Commission was debated as the third item which was included into the agenda based on a proposal of the National Commission member Vanja Čalović.

From the minutes of the National commission session

„The **President of the National Commission Gordana Djurović** expressed the view that this information is **not necessary for the work of the National Commission** having in mind its scope of competencies and its mandate. **Director of the Police Directorate** and a member of the National Commission, Veselin Veljović, in a short statement informed the members of the National Commission that this information has been defined as a strictly confidential document and expressed his agreement with the view of the President of the National Commission that **the content of the quoted information**, i.e. statements at the Parliamentary Committee, **has no importance for the scope of work of the National Commission. After the debate, on this issue, the National Commission did not give any statements.**“